Advanced Mining Group, Div. of Republic Corp., Lucerne Facility *and* United Steelworkers of America, AFL-CIO-CLC. Cases 6-CA-13171, 6-CA-13425, and 6-RC-8700

February 25, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On July 10, 1981, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,[1] and the General Counsel filed an answering brief in response to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[4]

[1] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] We agree with the Administrative Law Judge that Respondent by its conduct throughout the organizational campaign led employees to believe that an antiunion employee group, "SCAB," was acting on Respondent's behalf and with Respondent's approval. In addition to the facts set forth by the Administrative Law Judge, we further note that Respondent asked employees to join SCAB. Also, Respondent permitted SCAB members to use worktime to solicit other employees to join the antiunion campaign and vote against the Union. Respondent provided "VOTE NO" buttons to SCAB members and Respondent's supervisors and agents then observed SCAB members distribute the "VOTE NO" buttons on worktime. SCAB members prepared antiunion material and literature on company time and equipment, and Respondent permitted SCAB members to distribute antiunion material on worktime. Finally, we note that even if the conduct engaged in by SCAB was not attributable to Respondent, the number and coercive nature of Respondent's other unfair labor practices are sufficiently outrageous and pervasive to necessitate the issuance of a bargaining order.

In concluding that the Union represented a majority of employees in the unit, Chairman Van de Water finds it unnecessary to rely on the authorization card of employee Peterson.

[4] In his recommended Order and Notice, the Administrative Law Judge provided that Respondent shall cease and desist from "in any like or related manner" interfering with, restraining, or coercing employees in the exercise of their protected Sec. 7 rights. However, in light of our Decision in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), the Order and notice should be broadened to read "in any other manner" because we have found that Respondent engaged in egregious and widespread misconduct which demonstrated a general disregard for its employees' fundamental statutory rights.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Advanced Mining Group, Div. of Republic Corp., Lucerne Facility, Lucerne Mines, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(g):

"(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT engage in surveillance of our employees' union activities or create the impression we are engaging in such surveillance.

WE WILL NOT coercively interrogate our employees about their union activities.

WE WILL NOT threaten our employees with plant closure, loss of benefits, strikes, violence, layoffs, and other reprisals, if they chose the Union, United Steelworkers of America, AFL-CIO-CLC, or any other labor organization, as their bargaining agent.

WE WILL NOT promise and grant our employees wage increases or other benefits in order to discourage their support of the Union.

WE WILL NOT discourage membership in the above Union by discriminatorily refusing to reinstate employees to their former positions when they return from sick leave; by discriminatorily laying off employees; by discriminatorily refusing to recall employees; by discriminatorily terminating future recall opportunities for temporary employees; by discriminatorily promoting and granting wage increases to employees opposing union representation; and by discriminatorily refusing to promote

and grant wage increases to employees supporting the Union; or by otherwise discriminating against our employees in regard to their hire and tenure of employment or in regard to any condition of employment, because of their union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL NOT refuse to bargain collectively with the Union, United Steelworkers of America, AFL-CIO-CLC, as the exclusive representative of our employees in the unit described below.

WE WILL, upon request, bargain collectively with the Union, United Steelworkers of America, AFL-CIO-CLC, as the exclusive bargaining agent in the unit described below and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Lucerne Mines, Pennsylvania, facility, excluding all office clerical employees, technical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL offer employee Shank immediate and full reinstatement to the position of "tapper" which she was discriminatorily denied or, if that position no longer exists, to a substantially equivalent position; WE WILL offer employee Roudebush the position of temporary supervisor, when such a position for which she is qualified becomes available; WE WILL offer temporary employees, Marsh, Randolph, and Black temporary employment, when such positions for which they are qualified become available; and WE WILL make the above employees whole for any loss of earnings which they may have suffered as a result of our discrimination against them, as provided in the Board's Decision and Order.

ADVANCED MINING GROUP, DIV. OF REPUBLIC CORP., LUCERNE FACILITY

DECISION

STATEMENT OF THE CASE

FRANK H. ITKIN, Administrative Law Judge: Unfair labor practice charges were filed in the above cases on February 19, April 29, and May 7, 1980. Complaints were issued on April 30 and June 13, 1980. The complaints were later amended and consolidated with pending objections in the related representation proceeding. Hearings were conducted before me on the consolidated unfair labor practice allegations and representation objections in Indiana, Pennsylvania, on October 27, 28, 29, and 30, 1980. In brief, the General Counsel contends that Respondent Employer—in resisting Charging Party Union's efforts to organize and represent an appropriate unit of Respondent's employees—violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act by, *inter alia*, engaging in surveillance of employee union activities; creating the impression of engaging in such surveillance; coercively interrogating employees about their union activities; threatening employees with plant closure, layoffs, loss of benefits, and other reprisals if they chose union representation; promising and granting employees wage increases and other benefits in order to discourage union support; discriminating against employee Irene Shank; discriminatorily terminating recall opportunities for temporary employees Joan Marsh, Shirley Randolph, and Sandra Black; and discriminatorily refusing to promote and grant a wage increase to employee Judy Roudebush. The General Counsel and Charging Party seek a bargaining order here. Respondent denies that it has engaged in the coercive and discriminatory conduct as alleged and opposes the issuance of a bargaining order.

Upon the entire record, including my observation of the witnesses, and after due consideration of the briefs of counsel, I make the following:

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES

Respondent is admittedly an employer engaged in commerce. The Union is admittedly a labor organization. During mid-November 1979, the Union initiated its drive to organize the production and maintenance employees at Respondent's facility in Lucerne Mines, Pennsylvania. The Union filed a representation petition with the Board's Regional Director for Region 6 on February 11, 1980, and also requested recognition from Respondent. Respondent rejected the Union's request on February 12, 1980. Subsequently, on April 18, 1980, a representation election was conducted among the unit employees.[1] There were approximately 47 eligible voters. Of the votes casted 18 votes were cast for the Union; 22 votes were cast against the Union; and 4 votes were challenged. The Union filed timely objections to Respondent's conduct allegedly affecting the results of the election.[2] The testimony and documentary evidence pertain-

[1] It is undisputed that the following employees of Respondent constitute an appropriate bargaining unit:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Lucerne Mines facility, excluding all office clerical employees, technical employees, guards, professional employees, and supervisors as defined in the Act.

[2] The Union later withdrew its Objection 6 and, as the General Counsel notes in his brief, the remaining objections essentially track the allegations of the unfair labor practice complaints during the pertinent period of time.

ing to Respondent Employer's opposition to the Union's organizational campaign are summarized below.

A. *The Employees Hold Their First Union Meeting; Management Representatives Observe Employees at the Meeting Place; Employees Are Interrogated*

Employee Irene Shank testified that the first union meeting was held on November 20, 1979, at the Holiday Inn in Indiana, Pennsylvania; that she arranged for this meeting and notified coworkers in the plant where and when the meeting would take place; and that, upon her arrival at the Holiday Inn on November 20:

> [Union Representative] George Radulovich was standing in the lobby. . . . I [Shank] went up and introduced myself and we talked a little bit, and then [employees] Mary Clawson and Judy Roudebush and myself were there.

Shank recalled that:

> Judy Roudebush and myself were sitting in the lobby when [Company Supervisors] Gene Bartoletti and John Graham came in and they were with their wives. . . John Graham said hello and I said hello back.

Employee Judy Roudebush testified that she too attended the November 20 meeting at the Holiday Inn; that she and coworker Shank "were waiting in the lobby"; that supervisors "John Graham, Gene Bartoletti and their wives came in"; that Graham asked "what are you girls doing here tonight"; and that Graham "kept going" without waiting for Roudebush "to respond." At this union meeting, as will be discussed further *infra*, Union Representative Radulovich spoke to the employees about union representation and they all signed union membership cards.

A few days before this meeting, as employee Roudebush further testified, Supervisor Janet Rhoades approached Roudebush at work and said, "I [Rhoades] heard there was someone trying to get a Union in here." Roudebush replied, "Good, maybe seniority will count around here." Rhoades responded, "We have department seniority and if the Union comes in and your machine is broke down, you will be laid off, not sent to another department to work." Later that same day, Rhoades stated to Roudebush, "I don't care if you girls get a Union in here, as long as it's a good one."

Janie Mikulan testified that she was employed by Respondent from August 1978 until February 1, 1980, when she was "fired"; that she was "an accountant and customer service representative"; that she has "an accounting degree"; that about three or four employees worked "under" her direction; and that she possessed the "power to hire and fire" and various other indicia of supervisory status. Mikulan testified that shortly before the November 20 union meeting at the Holiday Inn, former Company Vice President John Einstein and Plant Manager Bruce Cassidy stated to her "that they had heard that there was going to be one [a union meeting] and that they would like to find out who would be there." Further, Mikulan recalled that, "the next morning after the meeting," on November 21:

> Bartoletti was in the hall, and he was talking to John Einstein. . . [Bartoletti] said, he had a nice dinner with his wife, him and John Graham . . . with their wives at the Holiday Inn, and it had been awkward because they ran into a few people from the plant in the lobby.

Mikulan recalled that employee "names" were then mentioned by Bartoletti to Einstein:

> I remember them saying Mary Clawson; . . . he saw Jerry Baker's car in the lot; and he thought maybe George [Reeger] had come with him.

Mikulan "believed" that employee Shank's name was also "mentioned" by Bartoletti.[3]

Employee Mary Clawson testified that she too attended the November 20 union meeting at the Holiday Inn; that she signed a union membership card at the time; and that a "few days after the meeting," Supervisor Rhoades "came up to me [Clawson] and she said, I heard somebody was trying to start a Union in here." Clawson responded, "I wonder who?" and then Supervisor Rhoades left.

B. *Management Apprises Employees of its Opposition to Union Representation; Employees Are Questioned and Warned About Union Representation*

Employee Shank testified that during late November, "after the [union] cards were passed out," she and her coworkers were assembled by management in the plant conference room. There, as Shank recalled:

> Mr. Einstein said that he had heard there were efforts to bring a Union into the plant and that he was pissed, and that he would do everything in his power to stop it.

Janie Mikulan testified that, about this same time, former Company Vice President Einstein "asked [her] if [she] could find out anything from [Mary Yarchak] on how the people in the plant stood" with respect to the Union. Mikulan explained that she was "a close friend" of Yarchak. Management, as Mikulan further testified, was "pretty sure" about the Union sentiments of "some" production "lines" in the plant, but "they were up in the air about the shell line." Mikulan recalled that, during early December 1979:

> I [Mikulan] asked her [Yarchak] . . . if it looked like more were for or more were against, and who if she knew.
>
> * * * * *
>
> Her response was that George Reeger and Irene Shank were definitely for the Union and that they

[3] Graham and Bartoletti, admittedly supervisors employed by Respondent, did not testify.

had . . . had a lot to do with the starting of getting the Union in.

Mikulan later related this information to Einstein.[4]

During late November 1979, Union Representative Radulovich, as he testified, distributed literature and membership cards to Respondent's employees at the entrance to the Lucerne plant. Thereafter, employee Shank and her coworkers received copies of the following letter, dated December 4, 1979, signed by John Einstein, as the Employer's "chief executive" (G.C. Exh. 9):

> Most Union cards are, in my opinion, nothing more than a *blank check*! If you sign it, you could actually be committing yourself to Union membership and many obligations you didn't know about. Signing one of these cards is like signing a blank check—you don't know what it's going to cost you in the future.
>
> These Union cards aren't as innocent as they look. If you should ever get one in the mail or anyone hand you one secretly, look carefully at the *wording*. The "tricky" *wording on Union cards* makes them mean a whole lot more than just a showing of interest to get a secret ballot election. Actually, your signature on a card could put a Union in here *without an election*.
>
> There have been actual Federal cases where Unions have lied, promised, and cheated employees to get cards signed. *Then the Union turned around and forced employees into court to testify about them*. Sometimes Union cards that are signed by employees are put into evidence and employees who signed them may be required to appear and testify under oath because they didn't understand what they were signing.
>
> Employees have been subjected to questionning by Government, Union, and Company attorneys concerning the circumstances in which they signed a Union card.
>
> THE UNION CARD CAN BE EXTREMELY DANGEROUS AND MISLEADING. FOR THIS REASON, WATCH THIS SITUATION CAREFULLY. IN MY OPINION, YOU SHOULD NOT SIGN ANY UNION CARD—I REPEAT—DO NOT SIGN A UNION CARD—UNDER ANY CIRCUMSTANCES.
>
> Without first getting all the facts about what you will be signing and committing yourself to, you should never sign your name to anything for a Union. I suggest you insist on reading the Union's constitution and bylaws yourself, or better yet, because of legal technical phrases, get a lawyer, one of your own choice, to interpret and explain the fine print to you.
>
> Of course, Union outsiders will often claim that almost everybody has signed up in a given department or on a given shift and that you should sign the card right now or risk being left out in the cold. *Don't believe their lies*. This is an old Union trick. If that doesn't work, someone may even try to pressure or threaten you to sign a card. *This would be illegal*. The Federal Government protects you and gives you the right to refuse to sign any Union cards. Let me know if you receive any such pressure or threats.
>
> I want to especially remind our Lucerne Industries personnel how we feel about Union outsiders: (1) We don't want Union troubles, Union threats, and Union strikes at Lucerne Industries. We want you and your family to remain free of Union strikes and Union troubles. (2) We will oppose any Union attempt to break up the good working relationship that exists here at Lucerne by all proper and legal means available.
>
> If you or any member of your family have any questions about this serious matter, please feel free to contact me.

And, about this same time, during early December 1979, the Employer posted a notice at the plant (G.C. Exh. 8), informing the employees, *inter alia*:

> Your name on a Union card can bind you all the way to the court house.
>
> A Union card is a legal document.
>
> The Courts have ruled that your name signed on Union card is a legal contract between you and the Union which binds you to all the laws and rules of the Union's constitution.

This poster cited to the employees, as examples, card language stating: "I hereby accept membership, hereby authorize, hereby designate."[5]

Employee Clawson recalled that later, about February 7, 1980, some 4 days before the representation petition was filed by the Union with the Board's Regional Director, former Company Vice President Einstein conducted a meeting among employees at the plant. Clawson testified:

> John [Einstein] had a letter [G.C. Exh. 22] that was addressed to [plant manager Cassidy] . . . it was threatening [Cassidy's] wife with rape, and he [Einstein] said he knew who sent this letter; that it was the people that was going around the plant asking employees to sign Union cards . . . He said he was going to fight the Union . . . we didn't need a Union . . . we didn't need a third party; he said that he's worked with unions for 10 years and he's seen violence and threats happen over and over again. And he said, that if we had problems all we had to do was come in the office.[6]

Employee Clawson next recalled that Vice President Einstein conducted another meeting of employees at the plant on or about February 15, 1980. Clawson testified:

[4] Yarchak, admittedly a supervisor, did not testify.

[5] Also see G.C. Exh. 15, a letter from Einstein to the employees, dated April 8, 1980, stating, "remember when they [the Union] lied to you about keeping your signature on their authorization card a secret."

[6] Plant Manager Cassidy claimed that he had received this threatening letter (G.C. Exh. 22) during November or December 1979—some 2 to 3 months before the meeting. Cassidy acknowledged that he did not know who had sent this letter.

> John [Einstein] passed out letters that were sent to him by [Union Representative] George Radulovich and he said George was dishonest and shifty, that he was a liar, that he was [promising] the people Harmony's contract and that he did not control the Company's money . . .

Einstein explained to the assembled employees that Harmony, another facility operated by the Employer:

> [H]ad been in business 20 years; they had a lot of strikes; and they fought hard to get what they have today.

Einstein, while responding to an employee's question at this meeting, warned "that the last plant he worked at became unproductive and that he recommended that it be shut down and it was shut down . . . ."

In addition, employee Clawson related that Plant Manager Cassidy conducted a meeting of employees at the plant about March 6, 1980. Cassidy told the assembled employees, *inter alia*, about the Harmony facility "going out and striking"; "negotiations might take a year"; "our wages might be retroactive and they might not be retroactive"; and "our wages would be frozen during the negotiations."[7] At this meeting, two employees—who were identified by Clawson as members of an antiunion group known as "SCAB" (Carol Reinhard and Ellen Hollingsworth)[8]—said, "they heard that we were going to lose" our "gloves and uniforms" which were supplied by the Employer, if the employees chose Union representation. Cassidy did not disavow this statement made by the antiunion employees. As Clawson noted, "the only thing Bruce [Cassidy] said about it was that the uniforms were worth about a dollar a day and it would be about 10 cents more an hour if we lost them."[9]

Employee Dianna Jackson testified that about March 18, 1 month before the representation election, Supervisor Bartoletti questioned her and coemployees Sally Stewart and Carol Reinhard during working time about "how we were going to vote." Jackson "ignored" Bartoletti and "started walking away." However, Jackson recalled: "One of the employees asked something about the Union and [Bartoletti's] response was, 'I don't know, go ask Irene Shank.'" Further, employee Gerald Baker testified that 1 week later, about March 24, Supervisor Mary Yarchak questioned him in the plant cafeteria area about "anything that might have gone on" at "any of the Union meetings." Baker claimed: "I didn't tell her [Yarchak] much of anything. . . ."

And, employee Janice Smith testified that about April 4, Supervisor Rhoades "approached" her outside the cafeteria area and:

> [S]he [Rhoades] said she was talking to all the girls who she got the job for, and she wanted to know why I [Smith] was leaning towards the Union; and I said that I never said that I was leaning towards the Union; then she told me a story about her brother-in-law who worked in the mines and he went on strike and they lost their jobs.[10]

C. *Respondent's Warnings Pertaining to Plant Closure, Loss of Benefits, Layoffs, Strikes, and Violence*

In addition to the evidence summarized above, there was further testimony pertaining to alleged warnings made by representatives of Respondent to employees if they chose union representation. Thus, employee Gerald Baker testified that during early April 1980, a few weeks before the representation election, Respondent spoke to employees assembled in the plant conference room. Former Company Vice President Einstein, Plant Manager Cassidy, and a representative from Respondent Tazewell Industries Division were present. Employee Baker recalled that the Tazewell representative:

> [T]old us how Tazewell had only been in business and how well they were doing and that he thought we should give this Company a chance to prove itself.
>
> * * * * *
>
> [He] said that [he] and part of the management had to go to California once a year and try to convince the Republic Corporation . . . that the plant was going to be a successful plant.
>
> * * * * *
>
> [He] said that he didn't think this plant could afford . . . any setbacks.
>
> He said that we couldn't let this monster get in here.[11]

[7] Also see G.C. Exh. 16, a letter from Einstein to the employees, dated April 10, 1980, stating, in part:

> In other words, if the Company and the Union took up to a year to reach an agreement, there would not be any changes in wages or benefits until the new agreement was in effect. It's somewhat like a freeze on wages and benefits.

[8] The evidence pertaining to the activities of this antiunion group and the Employer's responsibility for these activities are discussed below.

[9] Employee Clawson also recalled that Supervisor Bartoletti, in like vein, told her and coworkers at work on or about April 8, that "we would probably lose our gloves, uniforms, et cetera," if the employees chose union representation. Also see the testimony of employee Roudebush.

[10] Employee Clawson recalled that about April 15, some 3 days before the representation election, at a meeting of employees conducted by management in the plant, Company Representative Rick McDonald, from Respondent's Harmony facility "wanted to know from the people, who wanted to be Union, why they wanted to be Union." McDonald assertedly "was only interested in what promises had been made to them by the Union." Also see the testimony of employee Roudebush.

[11] Employee Baker further testified that Supervisor Yarchak spoke to Baker about 1 week before the representation election "outside the cafeteria area." Baker recalled that Yarchak "told me she thought that if the Union got in there that the plant might close" or "could close." Also see G.C. Exh. 13, a letter from Einstein to the employees, dated March 21, 1980, referring to the subject of the Employer's ability to "stay in business"; G.C. Exh. 2(i), a clipping posted at the plant during April, referring to "no job security at union shop and "big layoff at union shop"; and G.C. Exh. 18, a bulletin posted during this period, referring to "225 employees are in their 13th week of striking." Also see G.C. Exhs. 2(f), 2(h), 7, and 17, which were posted or distributed by Respondent.

Employee Clawson testified that she attended a meeting called by Respondent on April 15 at the plant. This meeting was held in a room which had posted on a bulletin board a notice or clipping stating: "21 people laid off April 14." Respondent introduced to the assembled employees representatives and personnel from Respondent's Harmony facility. One of the Harmony plant representatives apprised the assembled workers that "they've had a lot of wildcat strikes in Harmony"; employees were "fined" and "laid off"; and there was violence. A representative from Harmony told the assembled employees "that during one of the strikes he had to walk around the plant with a shotgun because of the rowdiness of the strikers." The assembled employees were also apprised that management was "in a good position here, if there is a strike," to resist the strike.[12]

Eric Peterman, a contract trucker who delivers "the bolts and supplies to the mines . . . manufactured at the [Lucerne] plant," recalled that about late March 1980, he had the following conversation with Plant Manager Cassidy:

> He [Cassidy] called me in for a special meeting on Saturday morning and informed me that we should look possibly for other work for our trucks, pending the vote of the Union. If we were informed that, if the Union were voted in, the plant would close, and me [sic] and Mr. Einstein would be transferred to other plants in the system.
>
> * * * * *
>
> He said he cannot—he said that it was a personal meeting, that it was not to be spread around the plant. He said that, I don't remember his exact words, we were joking about, he's not allowed to tell the plant employees that the plant will close because that's a threat, and he made some statement to the effect that that's how rumors get started or something like that. I don't recall exactly.

Former Company Vice President Einstein denied, *inter alia*, any knowledge of the presence of Supervisors Graham and Bartoletti at the Holiday Inn on November 20, 1979, while a union meeting was being held there; that these supervisors later reported to him "any information concerning the meeting;" and that he and other members of management threatened employees or engaged in related acts of coercion in opposition to the Union's campaign. Einstein claimed that he "first . . . heard about the Union" "around March 4, 1980," the date when the Board conducted a representation hearing in this proceeding. Elsewhere, Einstein, after being shown his prehearing affidavit, acknowledged that he "first learned about the Union actually in November 1979." Einstein, however, could not recall whether an employee or member of management "first informed" him about the union campaign. Einstein also acknowledged that he later told employees that he was "pissed off" because of their attempt to obtain Union representation. Einstein testified, "obviously I must have said that, I don't recall it, everyone else does."

[12] Also see the testimony of employee Roudebush.

Plant Manager Cassidy similarly denied, *inter alia*, being "aware of any Union meeting that was to be held" on November 20; being told by Supervisors Graham and Bartoletti about the meeting; threatening or witnessing other members of management threaten employees with strikes, violence, or other reprisals if they chose union representation; and engaging in related acts of coercion. Cassidy claimed: "the only thing that I ever said about any strikes at all would have been past experience I've been involved in." Respondent's postings and distributions pertaining to strikers were assertedly "factual." Elsewhere, Cassidy testified that "it would have been impossible" for the Employer to pay its Lucerne employees the "Harmony wage rate." Cassidy [h]ad heard rumors that they [the Union] would guarantee them [the Lucerne employees] the Harmony contract, but I [Cassidy] didn't see anything in writing."

Supervisor Rhoades also denied, *inter alia*, any advance knowledge of the November 20 union meeting; interrogating or threatening employees; or to related acts of coercion. Rhoades claimed that "individuals . . . came to [her] and made their participation and/or attendance at that meeting known"—"some of the girls mentioned it to [her]." Supervisor Rhoades, however, recalled the following conversation with employee Janice Smith:

> Well, I had said to [employee Smith] that I had learned that she was leaning towards the Union, and that since I had recommended her for a job, if there was any questions that she wanted to ask me about the Company, that she could feel free to do so, and she said okay, and that was the end of the conversation.

As noted, Supervisors Graham and Bartoletti did not testify. Likewise, Supervisor Yarchak did not testify. And, representatives from Respondent's other divisions or companies, who addressed the Lucerne workers during the campaign, did not testify.

D. *Management Promises and Grants Employees Wage Increases and Other Benefits*

1. The wage increase in December 1979

Janie Mikulan, previously employed by the Company as an accountant, testified that she was "familiar with the Employer's policy with respect to pay raises" in 1979 and early 1980; that Respondent "had just put a policy in effect" to give employees pay raises in August 1979 and then again in February 1980; that these two raises would follow President Carter's "guidelines"—"3-1/2 percent one part of the year and 3-1/2 percent the other"—or a total of 7 percent for the entire 12-month period; and that she was unaware of "any plans" on the part of Respondent "to give raises to employees other than" in August and February of the 1979–80 fiscal year.[13] Miku-

[13] Mikulan recalled that, shortly before February 1980:

> I [Mikulan] was working on the accrued vacation for the coming year, which we needed for the budget . . . and I had gone in and asked John Einstein if there would be . . . any changes in pay, because it would change . . . the whole schedule, and he said no.

lan further testified that during December 1979, Respondent gave a pay raise to its "shell line" employees contrary to the above "policy."[14] Mikulan recalled:

> John [Einstein] told me that he was going to give the raise, and I objected because it wasn't budgeted . . . it would have made our expenses a lot more for that month, that's three months before they [the employees] were supposed to get it.

Einstein, however, explained to Mikulan: "[W]hy not give it to them now as opposed to later and buy ourselves some votes."

Employee Clawson, assigned to work on the "manual line," testified that she and her coworkers "were told that the shell line [employees] received a raise" during early December 1979 and, consequently, "we asked for a raise" too. Clawson explained:

> [After] we found out that the shell line got a raise, both lines went into [to] talk to John Einstein, he saw us that day and we asked him. . . . He said that the shell line had asked for a raise in the summer, but we had asked for a raise too, and he said that he didn't know whether he could give us [a raise] since we were involved with the Union, that he would have to check with counsel.

Former Company Vice President Einstein testified, in part, as follows:

> Q. When was the decision made to give an increase to the shell line employees?
>
> A. On or around the first of December was when it was finally decided, yes, we're going to do this now.
>
> Q. And, that was after the shell line employees asked you for a raise?
>
> A. This had been an on-going discussion for several months, back into the summer, as to—it was a new line set up, I'll go through this again, it was a new line set up, we set it up and we said that we were not sure that the wage differential was either too high or too low to cover the differential in the different types of work that was in the plant and that we would review this and this is exactly what we did.
>
> Q. The question is, was the decision in early December 1979, to give the shell line employees an increase, made before or after the shell line employees asked for a wage increase?
>
> * * * * *
>
> THE WITNESS: The discussion or the request goes back to the summer.
>
> Q. The request by the shell line employees?
>
> A. The shell line employees. This was an ongoing discussion. This was not something that had come up at that particular time.
>
> Q. When is your budget prepared?
>
> A. The budget is prepared in April to May.
>
> Q. So, for '79-'80, it would have been prepared in April, May of 1979, is that correct?
>
> A. Now, we are going to get confused and you're going to confuse me on fiscal years and calendar years.
>
> Q. Okay. It was a fiscal year budget?
>
> A. Yes, it's fiscal year budget.
>
> Q. And, I believe you testified before, it was—it would have been from August 1, 1979 to July 31, 1980?
>
> A. That's correct, August to July.
>
> Q. And, that budget would have been prepared a few months before that fiscal year began, is that correct?
>
> A. That's correct.
>
> Q. That budget was based on the President's guidelines, is that correct?
>
> A. We attempted to base at least the wage portion from that, along with benefits, on those guidelines.
>
> Q. And, that would have been a 3-1/2 percent increase at one point during the year, and a 3-1/2 percent at another point in the year?
>
> A. Assuming nothing changed during the year, that's correct.

Einstein acknowledged that the "shell line" employees received a raise on or about December 1 and "the rest of the people" received a raise about December 10, 1979. Einstein claimed:

> We were going to do that . . . we did not want to create a problem by giving one group something and make the other group [wait]; so we felt it would be acceptable if we would change everybody's wage at that time.
>
> * * * * *
>
> We basically had a choice, we could make some people wait until February or give the raise early.[15]

2. The increase in shift differential posted on February 11, 1980

Employee Clawson testified that about February 11, 1980, the day the representation petition was filed, Respondent posted a notice (G.C. Exh. 19), advising its second- and third-shift employees that "effective February 4, 1980, there will be an adjustment to [their] shift differential" from 12 cents to 20 cents per hour for the second shift and from 15 cents to 25 cents per hour for the third shift. Clawson was unaware "of any other increases in shift differential before this time." There was no other notification of this wage increase. Clawson had not heard of any possible increase in the shift differential before the above notice was posted on or about February 11, 1980. And, as noted *supra*, accountant Mikulan had asked Company Vice President Einstein, shortly

[14] It was stipulated by the parties that previously the Employer had granted an "across-the-board raise" to employees of 3-1/2 percent in August 1979. The "shell line" did not receive this raise.

[15] The employees received an increase during December 1979, which significantly exceeded the 3-1/2-percent guideline limit. See G.C. Exh. 53.

prior to this time, "if there would be . . . any changes in pay," and Einstein had said "no."

3. The temporary employees receive a pay raise during March 1980

Respondent, in the past, hired temporary employees.[16] They were required to sign statements for Respondent acknowledging that they were "temporary employees for a term of approximately 30 to 120 days at an hourly rate of $3.50"; "that no Company-paid benefits will be furnished to such temporary employees" except, *inter alia*, "shift differential and overtime"; and that "should any temporary employee later be hired as a permanent employee all normal benefits furnished by this Company will start 90 days from the date of [such] notice." (See G.C. Exh. 26.) Joan Marsh, a temporary employee, testified that she had worked for Respondent during February and March 1979 and, again, during late 1979 and early 1980. Marsh had been told by Plant Manager Cassidy, during her initial interview in 1979, that "it was temporary work and the pay would be $3.50 per hour." Marsh signed the above statement on February 8, 1979, acknowledging her "temporary" status and rate of compensation.

Marsh recalled that on or about March 4, 1980 (the date a representation hearing was to be conducted on the Union's petition filed herein), she was asked by Respondent to report to the plant. Marsh showed up as requested. There, Plant Manager Cassidy took her to the conference room where Respondent's counsel then explained to her that they wanted "to see if [she] was going to be eligible to vote." Marsh was told "that there was to be a hearing and that they wanted [her] to go with them to the hearing." Marsh testified, "The attorneys asked [Cassidy] what the temporary help would make if they came back and he said somewhere around four dollars an hour." Marsh, as noted, had been paid previously $3.50 per hour. In addition, as Marsh further testified, "The lawyers, if I went to the hearing, wanted me to state that I was part-time help instead of temporary help." Marsh, however, was not hired as a "part-time" employee—she was never referred to as a part-time employee. Marsh did not testify at the representation hearing.

Accountant Mikulan testified that prior to February 1, 1980, she was not aware of "any raises which were being contemplated or planned for temporary employees" and, further, she was not aware "of any plan for any raise in a shift differential." As noted above, during late January or early February, former Company Vice President Einstein had explained to Mikulan that "there wouldn't be any changes" in wages.

It is undisputed that on or about March 24, 1980, Respondent hired a number of temporary employees. They were then given an increase from $3.50 to about $4 per hour. (See G.C. Exh. 42.) Plant Manager Cassidy acknowledged that "the temporaries were always at $3.50 an hour until they got that raise in 1980." And, it was stipulated that the temporary employees were previously excluded from the across-the-board pay raise given to employees in August 1979.

4. The cafeteria area is enclosed in March 1980

Employee Mary Lamar testified that she attended employer-employee meetings as far back as December 6, 1978, when "we were trying to come up with a system to partition the lunch area" in the plant. (See Resp. Exhs. 3 and 7.) Accountant Mikulan testified that as of early February 1980, "plans to enclose the food area" at the plant "had been mentioned," however, she was not aware "of any money that was set aside or earmarked for that project." Mikulan explained, "it would have been another expense coming into the financial [branch]; we would have to know that it was coming; it should have been budgeted for." It is undisputed that about March 1980, in the middle of the Union's campaign, Respondent caused the cafeteria area to be enclosed as requested earlier by employees.

5. Management asks the employees to postpone union representation

In addition to the evidence summarized above, there was further testimony pertaining to alleged promises made to employees by Respondent. Employee Janice Smith testified that, shortly before the representation election, Plant Manager Cassidy told her, "why don't we wait a year and see how the Company treated us and then, you know, try for another vote." Employee Baker similarly testified that Plant Manager Cassidy stated to him, shortly prior to the representation election, "He [Cassidy] thought I should trust in the Company, he said raises were due in August, and he couldn't promise any amount of raise, but he thought that we should trust in the Company." And, employee Jackson testified that Supervisor Rhoades stated to her, shortly prior to the election, "She [Rhoades] said that I should think about this and maybe give John Einstein at least another year to prove himself, and to get what the employees want."[17]

[16] As discussed below, the General Counsel contends that these temporary employeess should not be included in the bargaining unit.

[17] Former Company Vice President Einstein denied, *inter alia*, giving employees a wage increase "to buy votes." Einstein, however, was "not sure" whether separate 3-1/2-percent wage increases were scheduled for August 1979 and February 1980. Einstein testified, "I cannot answer that because I'm not sure of the dates." Later, Einstein claimed, "I can't remember the time frame." In addition, Einstein asserted, "Our real decision to move on with this [enclosing of the cafeteria] was when we put it in the budget item line under other for capital expenditures." Einstein was assertedly referring to the budget prepared in April or May 1979. Einstein claimed that construction on the cafeteria started about December 1979; however, he added, "it could have been earlier or it could have been a little later."

Plant Manager Cassidy denied, *inter alia*, telling employee Smith "that she should wait and see how the Company treated the employees before she would support any Union." Cassidy could not recall any such discussion. Cassidy claimed that he had not "intended any grant of benefit to encourage or dissuade anybody from support of either the Company or the Steelworkers." And, Supervisor Rhoades denied, *inter alia*, stating to employee Jackson "that all the employees should give John Einstein another chance."

E. *The Employer's Treatment of Employee Irene Shank*

1. Shank's union activities

Employee Irene Shank, as recited above, played a key role in initiating the Union's organizational drive at Respondent's Lucerne facility. Janie Mikulan explained how she had informed Vice President Einstein that Shank was "definitely" for the Union and "had a lot to do with the starting of getting the Union in." In addition, Shank, as she testified, openly supported the Union among her coworkers throughout the campaign and appeared on behalf of the Union at the Board representation hearing on March 4, 1980.

Shortly following the representation hearing, about March 7, 1980, as Shank recalled:

> I [Shank] was told that Mr. Cassidy wanted to see me in his office. I went into Mr. Cassidy's office and present was Mr. Cassidy, [employee] Jean Rainey and Janet Rhoades, a supervisor, and myself.
>
> * * * * *
>
> Mr. Cassidy handed me a copy of the [unfair labor practice] charges [filed previously by the Union with the Board.] I read them. I handed the charges back to him, and I said I didn't see the word fruit basket in the charges.[18]

After Shank told Cassidy in his office that the charges filed by the Union do not in fact refer to any "fruit baskets," Cassidy proceeded to question Shank, as follows, "Mr. Cassidy said that the word gift was in the charges, and he asked me [Shank], Irene, do you know of any gifts, and I said no." Shank had not been advised that she did not have to appear in Cassidy's office or "answer his questions." And, as discussed below, employee Rainey, present in Cassidy's office, was an active member of the antiunion group known as "SCAB."

2. Shank takes sick leave and is later denied reinstatement to her former job

The Union's organizational campaign, as noted, started in mid-November 1979. On November 26, 1979, employee Shank notified her Employer that she would be taking sick leave. See General Counsel's Exhibit 50, a letter from Shank's podiatrist explaining that Shank "will be admitted" to the hospital "on December 12, 1979, for surgical correction of foot pathology" and, "in all likelihood, she will be maintained in a below-knee plaster cast for six to eight weeks"; she "will ambulate with crutches for several weeks and then be fitted for a walking cast"; and "she will be expected to limit her activities during this post-operative period." Shank showed Plant Manager Cassidy this letter and he stated that "it was okay." Shank's job classification at the time was "a tapper."

Shank next testified that on January 14, 1980, she visited Respondent's facility in order to submit her medical insurance forms. Shank then had the following conversation with Plant Manager Cassidy:

> I [Shank] went in to see what Mr. Cassidy wanted, and he informed me that I no longer had the tapper job . . . the tapper job was being given to Mary Lamar because she came in with a doctor's certificate limiting her activities at work . . . she was going to do the tapper job which was a sit down job, and which was mine.
>
> I questioned this as to why this was being done, when in past practice when an employee was off sick they came back to their regular job. I was told that she had more seniority than me. I also questioned the statement in the [personnel] manual that, about [seniority in] the departments, and Mr. Cassidy read the manual and he said to me it was a matter of a difference of interpretation, that he was interpreting it one way and I was interpreting it another way, and if my interpretation was correct then the manual would have to be rewritten.

Shank explained that coworker Lamar previously worked in another department; that Lamar therefore had no seniority in Shank's department; and that Shank had held the position of tapper for over a year.

The Company's "Employee Policy Handbook" (G.C. Exh. 23, p. 10) states, in part:

> At Lucerne Industries we believe in recognizing your seniority and length of service. . . . We recognize seniority between regular full-time employees *within a department* if they are qualified to perform the type of work needed. [Emphasis supplied.]

The handbook (p. 25) also states, in part: "All employees returning from a leave of absence due to illness or accident, or of duration of less than one year, will be placed in their previous positions if it is available." Also see General Counsel Exhibit 51, an interoffice memorandum or addendum to the handbook, dated January 31, 1979, providing, in part:

> If due to an injury or illness and you must be absent from work, the maximum allowable time you may be off without losing your position is one half your seniority not to exceed a total of six months.[19]

Shank returned to work on March 3, 1980. Shank had submitted to Respondent a letter from her doctor indicating that "she may return to work as of March 3, 1980,"

[18] Earlier that day, as Shank explained, Respondent had conducted a meeting of employees in the plant, where it discussed the unfair labor practice charges filed by the Union against the Employer. During that meeting, Plant Manager Cassidy, in response to a question by employee Rainey, claimed that the charges referred to "fruit baskets." Shank, present at that meeting, spoke up. Shank stated, "fruit baskets were not in the charge." Also see G.C. Exh. 10, a letter from Vice President Einstein to the employees, dated February 22, 1980.

[19] Employee Clawson testified that a number of employees had been out of work for about 1 month and were permitted to return to their former jobs. Clawson noted that only Shank was not permitted to return to her original job. Clawson further noted that Supervisor Rhoades had explained to her that department seniority determines layoff status. Employee Roudebush testified that she was similarly apprised by Rhoades that "we have department seniority."

but she "should limit her ambulation and standing as much as possible." (G.C. Exh. 52). Shank testified:

> I showed [Plant Manager Cassidy] the letter from my doctor and he told me that there were no sit down jobs in the plant, and that I could possibly make shells on the [automatic] line, if it was all right with the [five other employees on that line] that I wouldn't rotate.[20]

Shank was not offered her tapper job, which was a sit-down job.

Shank next testified that on March 17, 1980, about 1 month before the scheduled representation election, "Mr. Cassidy told me that he had heard complaints from the girls on the automatic line because I was not rotating, and that I would have to take a layoff." The complaints which Cassidy assertedly had received from the line workers were to the effect that Shank was in fact "standing while working" and, therefore, she should be required to rotate positions. Shank, however, explained to Cassidy:

> I [Shank] told Mr. Cassidy that I didn't stand on the job for eight hours; that the most I stood on the job when I was making shells was about a half an hour; and when I did stand I had my bad foot propped up.

On March 17, when Cassidy told Shank that she would be laid off, he did not offer her any other job. Shank had not received any warning or notification that she would be taken off the automatic line job prior to March 17.

Plant Manager Cassidy, when questioned about employee Shank's March 17 layoff, testified in part, as follows:

> Q. And what was your next occasion to have any contact with either Miss Rhoades or Miss Shank, concerning her position?
>
> A. Well, when I was in the plant, a few of the employees on this line approached me, and said they observed Irene standing for two eight-hour shifts.
>
> Q. Who were these employees?
>
> A. I believe it was Jean Rainey and Patty McKeehan. I informed them at the time, that if the majority of the girls felt that Irene had to rotate, we would either make her rotate or take another position.
>
> Q. So did you make a decision then?
>
> A. I did not.
>
> Q. Okay, what happened after that, if anything?
>
> A. Later a majority of the girls came.
>
> Q. Now, who came, at that time, who came, the majority of the girls came, who came?
>
> A. It was Patty McKeehan, Sue Brown, and Jean Rainey.
>
> Q. What did they say to you if anything?
>
> A. That they insist that since Irene Shank had been standing, that there was no reason for her not to rotate and take the easiest job on the line, and I said that I would approach Mrs. Shank with this, which I did, I called her and Janet Rhoades into my office, told Mrs. Shank of this discussion with the girls.
>
> Q. Okay, and what was her response to the discussion that you had had with the girls, did she say that's correct, or did she deny it?
>
> A. She denied it.
>
> Q. Did she deny that she had been standing?
>
> A. She denied that she had been standing for eight hours straight.
>
> Q. Did you question any individuals as to whether she had in fact been standing for eight hours straight?
>
> A. Yes, I did.
>
> Q. And who did you question?
>
> A. I questioned her supervisor, Janet Rhoades.
>
> Q. And what was Janet Rhoades' response?
>
> A. She said she also observed her standing.
>
> Q. Okay, and then what action was taken, if any, after that, concerning a job for Miss Shank?
>
> A. I told Mrs. Shank, if she wanted to remain on the line, that she would have to follow normal practice, which is rotation, if she didn't want to do that, she could move to any other job in the plant, that her seniority could get her, at that time, and she interrupted before I even finished, and said, well, I will take a voluntary lay off, since my department isn't working.[21]

Cassidy recalled that Shank then left the plant and was not recalled until approximately 6 weeks later, after the Board-conducted representation election.

Cassidy insisted, as quoted above, that Shank had requested a voluntary layoff on March 17. However, Shank's absentee records for the pertinent period show that her absence was recorded as a regular layoff. On other occasions, when employees were granted voluntary layoffs as distinguished from regular layoffs, entries were made on their absentee calendars showing a voluntary layoff. See, for example, General Counsel's Exhibit 41, the cards of employees Shank and McCurdy. Further, Cassidy acknowledged that Shank's original position of tapper became available about 2 or 3 weeks before the election. Cassidy, however, did not notify Shank, "asking her to return to her tapper position."

Cassidy, when questioned about his understanding of Respondent's practice with respect to plant or department seniority, testified in part, as follows:

> Q. And what was your understanding at that time?
>
> A. That it was plant seniority.
>
> Q. And what did you base that on?
>
> A. Past practice, we are a young company, and it had been past practice that it had been plant seniority, anytime that someone had to be moved, or,—

[20] Shank explained that the employees on this line rotate positions every half hour—only one of the positions is a sitdown position.

[21] As discussed below, employees Rainey, McKeehan, and Brown were members of an antiunion group known as "SCAB."

> Q. Okay, but it is your testimony though, that you had not had a past practice, on this particular instance, is that correct?
>
> A. That's correct, on this particular instance.

Cassidy was unable to cite "an example of when plant seniority was used instead of department seniority, before Irene Shank's case."[22]

F. *Management Withdraws Recall Opportunities for Certain Temporary Employees*

Former Company Vice President Einstein, by letter dated March 21, 1980 (G.C. Exh. 13), apprised the Lucerne employees that, with respect to the Union's scheduled meeting for Sunday, March 23, "You might want to attend and get answers to some very important questions." Einstein suggested in his letter some questions which employees should ask the union representative at the meeting, also stating, *inter alia*:

> If I were you, I would get [Union Representative Radulovich] to guarantee a few things at the Sunday meeting. . . . The Union guarantees that as a result of negotiations you will never lose any of the benefits you now possess . . . The Union guarantees that they will find a job for you in the event we are non-competitive and economically can't stay in business in Lucerne.

Respondent, about this same time, started telephoning various former temporary employees to inquire if they wished to return to work on or about March 24, 1980, some 3 weeks prior to the scheduled representation election. Former temporary employee Shirley Randolph testified that on or about Febraury 27, Plant Manager Cassidy telephoned her to inquire "If I was interested in coming back to Lucerne." Randolph replied that "If it was temporary I really couldn't afford to return." Cassidy responded:

> He [Cassidy] said since I [Randolph] was working [elsewhere], he wouldn't want to mess me up, but he would mark it on the record that I would come back permanent, and keep me in mind for a permanent position.

Randolph further testified that Cassidy telephoned her again on or about March 21, and "it was basically the same as the first" call. Cassidy then stated to Randolph, "he wasn't sure whether it was going to be just temporary or permanent, but he would keep [Randolph] in mind for a permanent position possibly in the future." There was no reference made by Cassidy to the possibility of Randolph being taken off an employee list because she did not then return to temporary employment.

Former temporary employee Joan Marsh similarly recalled being asked by Respondent on or about March 21 if she would return. Marsh testified that she told Cassidy, "I couldn't work the afternoon shifts because I have two girls at home, but I'd be glad to come back day shift. He said that he would keep me in mind." Nothing was said to Marsh about being taken off any employee list. And, former temporary employee Sandra Black testified that about March 21, during her conversation with Cassidy, "he had told me that he . . . couldn't hire me back because I was pregnant, and he told me to keep in contact with them . . . ." Nothing was said to her about an employee list.

Charging Party Union held its meeting as scheduled on Sunday March 23, 1980. Employee Clawson attended the meeting. Clawson recalled that there were about three tables at the meeting place; that the prounion employees, including former temporary employees Randolph and Marsh, sat together; and that groups of antiunion employees, referred to as "SCAB," sat together. Clawson explained that coworkers Shank, Roudebush, Baker, and her, all union supporters, sat together with temporaries Randolph and Marsh.[23] The antiunion group included Jean Rainey, Carol Reinhard, Sue Brown, Patty McKeehan, Steve Davis, Eric Harmon, and Doug Hippchen, and they grouped at the tables. Rainey was observed at this meeting making a list of those persons who were present at this meeting. Rainey, in her testimony, admitted making a list of names of persons present at this meeting. Although Rainey denied disclosing this list to Respondent, Rainey acknowledged telling Supervisor Rhoades "that I attended the meeting."

On or about March 24, 1980, a number of temporary employees started work for Respondent. (See G.C. Exh. 42.) Their rate of pay, as discussed above, was increased from $3.50 to about $4 per hour. Shortly thereafter, former temporary employees Marsh, Randolph, and Black, and three other temporaries, were notified by certified letters, dated March 28, 1980, that they were being "removed from our permanent part-time employee list" because they refused recall. (See G.C. Exhs. 25, 27, and 28.) (Also see G.C. Exhs. 43(a) through (f).) Janie Mikulan, previously employed as an accountant by Respondent, never heard of any permanent part-time employee list or any such letters being sent to temporary employees who were unavailable when requested to return to work. Plant Manager Cassidy was asked, "Are you aware of any permanent part-time employee list?" He responded, *inter alia*, "we don't have a typed list"; "it depends on your definition of lists"; and "we have no such list." Cassidy acknowledged that the letters sent to the temporary employees on March 28 "are the first such letters that Respondent ever sent to any temporary employee." Cassidy was not "aware of any Employer document, indication [or] paper of any sort, which had the words *regular part-time employees* on it, which was in ex-

[22] Supervisor Rhoades claimed, *inter alia*, that she had observed Shank "standing for two eight-hour shifts" prior to March 17. Rhoades was uncertain when these "two eight hour shifts" occurred. Rhoades claimed "that I don't remember that well." Elsewhere, Rhoades recalled that Shank had to go home because her ankle was swollen and in pain, prior to her March 17 layoff. Rhoades also claimed that she witnessed Shank request a voluntary layoff.

[23] Randolph and Marsh testified that this was the only union meeting which they had attended.

istence before those March 28 letters to the temporaries."[24]

G. *Management Promotes and Grants Wage Increases to Employees Carol Reinhard, Dorla Smith, and Karlee Wannett; Management Fails To Promote and Grant a Wage Increase to Employee Judy Roudebush*

Employee Roudebush testified that she was one of the key supporters of the Union's campaign. She attended the first union meeting on November 20, 1979, where, as discussed above, she was observed by Supervisors Graham and Bartoletti. She prominently displayed union stickers on her clothing at work. She solicited the union support of her coworkers. She also attended the Board representation hearing on March 4, 1980, on behalf of the Union. Supervisor Rhoades acknowledged that she, Rhoades, "knew" employee Roudebush was "for the Union."

Employee Roudebush testified that for periods throughout 1979 and during early 1980, she "served as a temporary supervisor" on the "manual line"; that prior to March 1980, coworker Lamar also served in such capacity on that line; and that both she and Lamar "have more seniority in that department than any other employee."[25] Roudebush, as well as Lamar, would receive an additional 50 cents per hour when performing this temporary supervisor assignment.

Roudebush next testified that about late March 1980, some 3 or 4 weeks prior to the scheduled representation election, Respondent named employee Dorla Smith as temporary supervisor on the manual line; employee Karlee Wannett as temporary supervisor on the automatic line; and employee Carol Reinhard as temporary supervisor on the automatic threader. Roudebush explained that Smith, a coworker on the manual line, had never performed this supervisory assignment in the past; that Wannett also had not performed her supervisory assignment in the past on the automatic line; and that she, Roudebush, was "as qualified as" Wannett to serve as temporary supervisor on the automatic line.[26]

Employee Wannett testified that Supervisor Rhoades appointed her to temporary supervisor on the automatic line; that Rhoades asked Wannett repeatedly to take this position; and that initially Wannett declined the position. Wannett ultimately took the job after Rhoades stated that "no one on the line would accept the position." In addition, Supervisor Rhoades acknowledged that she knew the union sentiments of "most of the employees." Smith, Reinhard, and Wannett had each signed a petition opposing union representation. (See G.C. Exh. 29.) Wannett had opposed the Union and, as she admitted, "possibly" told Rhoades "how [she] felt about the Union." Reinhard had played a prominent role in opposing the Union with a group known as SCAB, discussed further below.

Plant Manager Cassidy claimed that employee Roudebush's performance was deficient in attendance. Roudebush was given a performance evaluation in the summer of 1979 showing this alleged deficiency. Cassidy further claimed that subsequent to the evaluation, he observed "further deterioration in . . . Roudebush's attendance." He dated this "around the first of the year in 1980." Cassidy further testified:

> [I]t was around the first of the year, we were taking a look at employee absentee problems, and Miss Roudebush had the highest absentee rate of anybody in the plant, and in reviewing her verbal warning that was issued to her, it was decided that she should be written up on it.

Cassidy recalled that "after the written warning," Roudebush's "absenteeism-attendance" problem "improved considerably."[27]

Cassidy further testified that:

> Mrs. Roudebush was written up by Geno Bartoletti for leaving her work station, and punching out, apparently becoming frustrated over something. And, it was only at that time that Mrs. Rhoades came to me and said that she [Rhoades] had gone to Judy [Roudebush] several times herself in the past, as a friend, and stopped her.

Cassidy testified that he told Rhoades not to offer Roudebush "such a position" as temporary supervisor "with her absentee problem at that time and the fact that she left the shop." Supervisor Rhoades, referring to Roudebush's leaving the plant, acknowledged that she, Rhoades, did not "write her up" for this conduct, and "in fact I [Rhoades] didn't even tell Bruce [Cassidy] about it."[28] Supervisor Rhoades claimed that Roudebush was not offered the temporary supervisory job because of the absenteeism. However, as will be discussed further below, employees Smith and Reinhard also had high absenteeism records during this period. (See, generally, G.C. Exh. 41.)[29]

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[24] As discussed below, Respondent argues here that the temporary employees should be included in the bargaining unit. The General Counsel would exclude these employees from the unit.

[25] Roudebush recalled that Karlee Wannett once served as a temporary supervisor on the manual line. Roudebush, however, was "not present at that time at work."

[26] Plant Manager Cassidy also noted that employee Reinhard "was not a temporary supervisor before March 24, 1980."

[27] See Resp. Exh. 12, a memorandum dated February 18, 1980, indicating that on February 14 Roudebush was "given a written warning for excessive absenteeism. If it is not corrected, it will lead to dismissal."

[28] Roudebush recalled leaving the plant or work area without authorization on two occasions, once in the summer of 1979 and the other, in early 1980.

[29] I have quoted from and summarized in sections A through G above the testimony of Shank, Roudebush, Mikulan, Clawson, Radulovich, Jackson, Baker, Smith, Peterman, Marsh, Lamar, Randolph, Black, and Wannett. The testimony of these witnesses, as detailed *supra*, impressed me as credible and trustworthy. This testimony establishes, as will be further discussed herein, a common pattern of threats, coercion, and discrimination on the part of Respondent in an attempt to deter its employees from exercising their statutory right to union representation. This testimony is also substantiated in part by uncontroverted documentary evidence of record. Insofar as the testimony of Einstein, Cassidy, and Rhoades conflicts with the testimony of the above witnesses, I credit the testimony of the above witnesses as more accurate, reliable, and trustworthy than the testimony of Einstein, Cassidy, and Rhoades. As the record

Continued

II. DISCUSSION

Section 8(a)(1) of the Act makes it an unfair labor practice for an Employer "to interfere with, restrain, or coerce employees in the exercise of" the rights guaranteed to them in Section 7 of the Act. The latter section provides that employees "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all such activities." The credited testimony, summarized *supra*, establishes that the Employer, in response to the Union's organizational drive, embarked upon an extensive antiunion effort calculated to deprive the employees of "the complete and unhampered freedom of choice" guaranteed to them in Section 7 of the Act. *N.L.R.B.* v. *Link-Belt Co.*, 311 U.S. 584, 588 (1941).

A. *Coercive Interrogations; Threats; Surveillance and the Impression of Surveillance*

Employee Roudebush credibly recalled that shortly prior to the Union's first organizational meeting, Supervisor Rhoades approached Roudebush at work and stated, "I heard there was someone trying to get a Union in here." Roudebush, a strong union supporter, replied to Rhoades, "Good, maybe seniority will count around here." Rhoades then admonished Roudebush, "We have department seniority and if the Union comes in and your machine is broke down you will be laid off." Employee Clawson credibly recalled how Supervisor Rhoades similarly confronted her at work.

Employee Jackson credibly recalled how Supervisor Bartoletti questioned employees "about how we were going to vote." When one of the employees "asked something about the Union," Bartoletti responded, "I don't know, go ask Irene Shank"—a known union protagonist. Likewise, employee Baker credibly related how Supervisor Yarchak questioned him about "anything that might have gone on" at union meetings. Employee Smith was also confronted by Supervisor Rhoades, who "wanted to know why I [Smith] was leaning towards the Union."

In like vein, McDonald, a representative from the Employer's Harmony facility, at a meeting of the Lucerne employees called by management, "wanted to know who wanted to be Union why they wanted to be Union." And, employee Shank credibly testified how Plant Manager Cassidy, in the presence of Supervisor Rhoades and an antiunion employee, Rainey, questioned Shank about pending unfair labor practice charges filed by the Union against the Employer. Cassidy quizzed Shank: "Irene, do you know of any gifts, and [she] said no." Shank had not been advised that she did not have to appear in Cassidy's office or "answer his questions." Shank, a key union supporter, was discriminatorily laid off by Cassidy some 10 days later.

I find and conclude that company representatives Rhoades, Bartoletti, Yarchak, McDonald, and Cassidy, by the foregoing conduct, violated Section 8(a)(1) of the Act. These repeated unwarranted attempts to discover which employees were involved in the Union campaign and to pry into protected union activities, coupled with Respondent's stated opposition to unionization and threats of reprisals, constitute the kind of coercive interrogation proscribed by Section 8(a)(1) of the Act. See *N.L.R.B.* v. *Gladding Keystone Corp.*, 435 F.2d 129, 132–133 (2d Cir. 1970) and *N.L.R.B.* v. *Novelty Products Co.*, 424 F.2d 748, 751 (2d Cir. 1970).

In addition, "the law is clear that an Employer's surveillance of Union activity can unlawfully inhibit the exercise of rights to engage in concerted activity," in violation of Section 8(a)(1). Cf. *N.L.R.B.* v. *Aero Corp.*, 581 F.2d 511 (5th Cir. 1978). An employer may also violate this statutory proscription by "creating the impression of surveillance" of employee union activities. Cf. *N.L.R.B.* v. *Redwing Carriers, Inc.*, 586 F.2d 1066 (5th Cir. 1978). Janie Mikulan credibly recalled how upper management told her, shortly prior to the November 20 union meeting at the Holiday Inn, "they had heard there was going to be one [a meeting] . . . and they would like to find out who would be there." Supervisors Bartoletti and Graham were subsequently observed by employees at the Holiday Inn during the evening of the meeting. Employee Roudebush credibly explained how Supervisor Graham asked, "what are you girls doing here tonight," and then "kept going" without waiting for Roudebush "to respond." On the next day, Supervisor Bartoletti related to upper management the names of the employees observed at the Holiday Inn. In addition, as found *supra*, Supervisor Rhoades apprised employee Roudebush: "I heard there was someone trying to get a Union in here." Rhoades made a similar statement to employee Clawson. Rhoades further quizzed employee Smith: "why [Smith] was leaning towards the Union." Respondent, by the foregoing conduct, engaged in surveillance of the November 20 union meeting and repeatedly attempted to create among its employees the impression that it was engaging in surveillance of employee union activities, in violation of Section 8(a)(1) of the Act.

Counsel for the General Counsel, in his post-hearing brief, argues that Respondent further violated Section 8(a)(1) by threatening employees with plant closure, loss of benefits, strikes, violence, and layoffs. Counsel for Respondent argues, *inter alia*:

> Respondent asserts that all statements or dissemination of information carried out by Respondent were, as the record will show, expressions of opinions, accurate recitals of personal experiences or statements of well-publicized facts made to employees with the sole intention of creating an atmosphere conducive to the casting of an informed vote.

As stated, Section 8(a)(1) makes it an unfair labor practice for an Employer "to interfere with, restrain, or

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shows, the testimony of Einstein, Cassidy, and Rhoades was at times vague, evasive, contradictory, and unclear.

Testimony and related documentary evidence pertaining to the Union's card majority and the activities of an antiunion group known as SCAB are discussed below.

coerce employees" in the exercise of their right to self-organization. Section 8(c), in turn, provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof . . . shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

Read together, these provisions leave an Employer free to communicate to his employees his views respecting unions, so long as that communication does not contain a "threat of reprisal or force or promise of benefit." The Supreme Court stated in *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575, 616–620 (1969):

> Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely as those rights are embodied in Section 7 and protected by Section 8(a)(1) and the proviso to Section 8(c). And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.
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> [An] employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control," and not "threats of economic reprisal to be taken solely on his own volition." *N.L.R.B.* v. *River Togs, Inc.*, 382 F.2d 198, 202 (2d Cir. 1967)

And see *Surprenant Mfg. Co.* v. *N.L.R.B.*, 341 F.2d 756, 761 (6th Cir. 1965); *N.L.R.B.* v. *Harold Miller, et al. d/b/a Miller Charles & Co.*, 341 F.2d 870, 873 (2d Cir. 1965); *International Union of Electrical Workers* v. *N.L.R.B.*, 289 F.2d 757, 763 (D.C. Cir. 1960); *N.L.R.B.* v. *Kolmar Laboratories, Inc.*, 387 F.2d 833, 836–838 (7th Cir. 1967); *N.L.R.B.* v. *Louisiana Manfacturing Co.*, 374 F.2d 696, 702–703 (8th Cir. 1967). Moreover, as the Supreme Court further noted in *Gissel, supra*:

> [A]n employer cannot be heard to complain that he is without an adequate guide for his behavior. He can easily make his views known without engaging in "brinkmanship" when it becomes all too easy to "overstep and tumble into the brink," *Wausau Steel Corp.* v. *N.L.R.B.*, 377 F.2d 369, 372 (7th Cir. 1967). At least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees.

Employee Baker credibly recalled how Supervisor Yarchak told Baker that Yarchak "thought that if the Union got in there . . . the plant might close" or "could close." Trucker Peterman, as he credibly testified, was informed by Plant Manger Cassidy that "if the Union were voted in the plant would close." Cassidy, at the same time, told Peterman that this "was not to be spread around the plant . . . that's how rumors get started . . ." Employee Roudebush credibly recalled how Supervisor Bartoletti warned her and a number of coemployees: "we would probably lose our [Company supplied] gloves [and] uniforms" if the employees chose union representation. Plant Manager Cassidy got this same message across to employees at a meeting in the plant, explaining, as employee Clawson credibly testified, "the uniforms were worth about a dollar a day and it would be about ten cents more an hour if we lost them." Clearly, the above warnings by Respondent constitute proscribed threats and are not privileged speech under Section 8(c).

Equally coercive and in violation of Section 8(a)(1) was Vice President Einstein's December 4, 1979, letter to the unit employees (G.C. Exh. 9). Einstein made clear to the employees in this letter his strong opposition to union representation and also instructed the employees: "DO NOT SIGN A UNION CARD . . . UNDER ANY CIRCUMSTANCES." Einstein, at the same time, warned: "you don't know what it's going to cost you in the future"; "employees who signed them may be required to appear and testify under oath"; employees "have been subjected to questioning by Government, Union and Company attorneys concerning the circumstances in which they signed a card": "The Federal Government protects you and gives you the right to refuse to sign any Union cards. Let me know if you receive such pressure or threats." Later, Einstein wrote the unit employees (G.C. Exh. 15): "remember when they [the Union] lied to you about keeping your signature on their authorization card a secret." As the Board reasoned in *Colony Printing and Labeling*, 249 NLRB 223 (1980):

> When, as in the instant case, an employer expresses its absolute opposition to unions "as clearly and strongly as possible," and then warns its employees that "in many instances, the signed card is disclosed to the company" and that the employees should be "careful about what you sign," It is reasonably predictable, if not entirely certain, that the employees will construe it as a warning that not only might the identity of card signers be disclosed to the employer, but that more importantly, such disclosure is to be carefully avoided, in order to avoid retaliation by the employer; and, of course, the most effective way to avoid such disclosure is not to sign a union authorization card in the first place. Indeed, it is difficult to imagine what other purpose an employer might have in warning its employees in this manner.[30]

Respondent, as the credible evidence shows, conducted meetings of the unit employees where it repeatedly voiced its opposition to union representation. At one such meeting, employees were told by company officials:

[30] In addition, as the Board noted in *Colony Printing*, Respondent's message has the effect "of encouraging employees to report to Respondent the identity of union card solicitors who in any way approach employees in a manner subjectively offensive to the solicited employees," in further violation of Sec. 8(a)(1) of the Act

> we should give this Company a chance to prove itself . . .; Management had to go to California once a year and try to convince the Republic Corporation . . . that the plant was going to be a successful plant; he didn't think this plant could afford . . . any setbacks . . .; we couldn't let this monster get in here.

Employees were also told by management that "negotiations might take a year"; "our wages might be retroactive and they may not be retroactive"; and "our wages would be frozen during the negotiations." Indeed, Einstein, in a letter to the employees (G.C. Exh. 16), warned:

> In other words, if the Company and the Union took up to a year to reach an agreement, there would not be any changes in wages or benefits until the new agreement was in effect. It's somewhat like a freeze on wages and benefits

Einstein, in a less subtle manner, told the assembled employees "that the last plant he worked at became unproductive and that he recommended that it be shut down." These statements, by top management, were not "carefully phrased on the basis of objective fact to convey an Employer's belief as to demonstrably probable consequences beyond his control." *Gissel, supra.* Respondent was in fact threatening the employees with a plant closedown and loss of benefits in violation of Section 8(a)(1).

Counsel for the General Counsel contends that the Employer's "overall campaign of repeated emphasis upon strikes, violence, layoffs and plant closings created a coercive atmosphere and . . . the impression that strikes, violence, layoffs, plant closure and other adverse consequences would flow from unionization." Counsel for Respondent, as noted *supra*, argues that Respondent's "statements" and "dissemination of information" were "expressions of opinions, accurate recitals of personal experiences or statements of well-publicized facts." In *Amerace Corporation*, 217 NLRB 850, 852 (1975), the Board explained:

> In arguing against unionism, an employer is free to discuss rationally the potency of strikes as a weapon and the effectiveness of the union seeking to represent his employees. It is, however, a different matter when the employer leads the employees to believe that they must strike in order to get concessions. A major presupposition of the concept of collective bargaining is that minds can be changed by discussion, and that skilled, rational, cogent argument can produce change without the necessity for striking. When an employer frames the issues of whether or not the employees should vote for a union purely in terms of what a strike might accomplish, he demonstrates an attitude of predetermination that bargaining itself will accomplish nothing. Employees should not be led to believe, before voting, that their choice is simply between no union or striking.

Also see *Louis Gallet, Inc.*, 247 NLRB 63 (1980), and cases discussed.

Applying this reasoning to the credible evidence of record in this case, I find that Respondent—in the context of its intense antiunion campaign and accompanying acts of coercion and discrimination—violated Section 8(a)(1) of the Act by its repeated emphasis upon strikes, violence, layoffs, and plant closings. In short, Respondent was making clear to its employees "that their choice is simply between no union" or strikes, violence, layoffs, and related adverse consequences. (*Ibid.*) Thus, for example, Vice President Einstein warned of "Union troubles," "Union threats" and "Union strikes" in his December 4 letter to the employees (G.C. Exh. 9). Thereafter, Einstein (referring to a document allegedly sent to Cassidy some months earlier by an unidentified person or persons which purportedly threatened Cassidy's "wife with rape") accused the union card solicitors of sending this threatening letter, and again warned of "violence and threats." Later, Einstein told assembled employees about "strikes" at Respondent's Harmony plant. He also made clear "that the last plant he worked at became unproductive and that he recommended that it be shut down and it was shut down." Einstein, in a letter to employees dated March 21 (G.C. Exh. 13), asked the employees to "get" the union representative "to guarantee," *inter alia*, "they will find a job for you in the event we are uncompetitive and economically can't stay in business in Lucerne." Literature posted and distributed by Respondent during this campaign repeatedly referred to such layoffs and strikes. And, shortly before the representation election, Respondent covered an entire wall with a "list of strikes" by union employees. (See G.C. Exhs. 17 and 18.) Representatives from Respondent's other facilities were brought in to tell the Lucerne employees about "wildcat strikes" and "violence" and, at the same time, to explain that Respondent was "in a good position here, if there is a strike," to resist the strike. In sum, Respondent, by this conduct, threatened its employees with strikes, violence, layoffs, closedowns, and similar consequences if they voted for union representation.[31]

B. *Wage Increases, Promises, and Grants of Benefits*

Counsel for the General Counsel argues that Respondent violated Section 8(a)(1) by granting a wage increase to employees in December 1979; by granting shift differential wage increases to employees in February 1980; by granting a wage increase to temporary employees in March 1980; by enclosing the plant cafeteria in March 1980; and by promising employees future benefits if they would abandon their support of the Union. Counsel for Respondent denies that its conduct was unlawful.

The United States Court of Appeals for the Fifth Circuit, in restating the pertinent legal principles in

[31] I note that Einstein, in his April 14 letter to the employees (G.C. Exh. 17), headlined in large print with the word "strike," states: "I am not saying that we would necessarily have a strike here if the Union won." This language, read in the context of the entire letter referring to strikes, as well as Respondent's related statements, is hardly an effective or reasonable disclaimer of the threat of such strikes. Respondent's message, in this and related literature, was that, in effect, there would be such strikes with union representation.

N.L.R.B. v. *WKRG-TV, Inc.*, 470 F.2d 1302, 1307–08 (1973), commented:

> We cannot ignore decisional acceleration in employee benefits preceded by months of lethargy. Lightening struck only after the Union's rod was hoisted. In this case the wage readjustments and other benefits, to say nothing of the initial announcement of these benefits, were clearly a counter-weight to [the Union's] organizational efforts. To permit a Company to time its announcement and allocation of benefits in such a fashion would be a great disservice to the ideal of organizational freedom so deeply imbedded in the [Act].

For, as the Supreme Court had observed earlier in *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405 (1964):

> The danger inherent in well-timed increases in benefits is the suggestion of the fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

The credible evidence of record shows that months prior to the initiation of the Union's organizational drive, the Employer had adopted a "wage policy" for its August 1979 to July 1980 fiscal year. Under that "policy," employees would receive two wage increases of 3-1/2 percent each, one in August 1979, and the second in February 1980, or a total of 7 percent for the 12-month period. This "wage policy" would follow President Carter's wage "guidelines." And, as stipulated, employees were in fact given a 3-1/2-percent increase during August 1979.

However, in mid-November 1979, the Union launched its campaign at Lucerne. Shortly thereafter, about December 1, 1979, Management suddenly decided to grant its "shell line" employees a pay raise. Mikulan, an accountant employed by the Company, "objected" to Vice President Einstein when told about this raise, because, "it wasn't budgeted . . . it would have made our expenses a lot more for that month . . . that's three months before the employees were supposed to get it." Einstein explained to Mikulan: "why not give it to them now as opposed to later and buy ourselves some votes."

Subsequently, other production workers, having been informed about the sudden granting of a wage increase to the "shell line," approached Einstein and they too wanted an increase. Einstein acknowledged that the "shell line" received a raise about December 1 and "the rest of the people" received their raise about December 10. Einstein claimed:

> We did not want to create a problem by giving one group something and make the other group [wait]; so we felt it would be acceptable if we would change everybody's wage at that time. . . . We basically had a choice; we could make some people wait until February or give the raise early.

The wage increases given to the employees in December significantly exceeded the wage "guidelines." (See, generally, G.C. Exh. 53.)

On February 11, 1980, the Union filed its representation petition with the Board's Regional Director. On that same day, the Employer suddenly posted a notice advising its second and third shift employees that "effective February 4, 1980, there will be an adjustment to [their] shift differential" from 12 to 20 cents per hour for the second shift and from 15 to 25 cents per hour for the third shift. There was no other notification of this unprecedented increase, which also exceeded the wage "guidelines."

Finally, on March 24, 1980, some 3 weeks before the scheduled representation election, Respondent hired a number of "temporary employees." Previously these employees had been excluded from the August 1979 across-the-board wage increase. Respondent, however, raised the salary of these "temporary employees" by 50 cents per hour. As noted above, Respondent is contending here that these "temporary employees" should be included in the bargaining unit. One of the "temporary employees," Marsh credibly recalled how company counsel "wanted [her] to state" at the March 4 representation hearing that she was "part-time help instead of temporary help." This, of course, was not true. And, accountant Mikulan credibly testified that she was unaware of "any raises which were being contemplated or planned for temporary employees" and, further, was not aware of "any plan for any raise in a shift differential." Moreover, although discussions between Respondent and the employees pertaining to enclosing and improving the plant food or cafeteria area date back to 1978, these improvements were suddenly implemented in March 1980, about 1 month prior to the representation election. Accountant Mikulan credibly testified that she was unaware of "any money that was set aside or earmarked for that project."

I find and conclude here that the sudden granting of the December 1979 wage increases, the unprecedented granting of the shift differential increase in February 1980, the unprecedented granting of a wage increase to the "temporaries," and the enclosing of the food area, under the circumstances present here, were plainly calculated to deter union activity and, as Einstein told Mikulan, "buy ourselves some votes." Indeed, this case provides dramatic examples of the quoted Court language: "decisional acceleration in employee benefits preceded by months of lethargy"; lightening first struck after the Union's rod was hoisted"; and "employees are not likely to miss the inference that the source of the benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." However, Respondent, to make sure that the employees got the message, told them, as found in section D,5, above, "why don't we wait a year and see how the Company treated us"; "raises were due in August . . . we should trust in the Company"; and "maybe give John Einstein at least another year to prove himself, and to get what the employees want." Respondent, by the foregoing conduct, unlawfully granted wage and benefit increases to employees and unlawfully promised employees

benefits in an attempt to deter their union support, in violation of Section 8(a)(1) of the Act.

C. *The Discriminatory Treatment of Employee Shank*

Employee Shank, as found in section E,1, *supra*, was chiefly instrumental in bringing the Union to the Employer's Lucerne facility. Vice President Einstein explained to his employees "that he was pissed and that he would do everything in his power to stop it." Respondent thereafter engaged in an extensive antiunion campaign. Respondent was well aware of Shank's union activities. Mikulan had informed Einstein that Shank "had a lot to do with the starting of getting the Union in." Shank openly supported the Union throughout the campaign. Shank appeared at the Board representation hearing on March 4, 1980, on behalf of the Union. And, Shank spoke up to Plant Manager Cassidy at a meeting conducted on or about March 7, 1980, concerning the content of pending unfair labor practice charges.

Shank worked as a "tapper" for the Employer. She had held this position for "over a year." About December 12, 1979, she took "sick leave" for foot surgery. She provided the Employer with the necessary medical documentation for this leave. During January 1980, when she visited the plant in order to submit her insurance forms, Plant Manager Cassidy told her that she "no longer had the tapper job." The "tapper job" was "a sit down" job which would have enabled Shank to return to work and satisfy her doctor's recommendation for limited ambulation during the post-operative period. The "tapper job" was, instead, given to an employee who worked in another department.

Shank protested the Employer's failure to return her to her "tapper job." She noted, and the record shows, that Respondent, in refusing to reinstate Shank to the "tapper job," violated its past practice and printed personnel policy which provide for reinstatement and department seniority in such cases. Management claimed that it was using "plant seniority." However, Plant Manager Cassidy was unable to cite" an example of where plant seniority was used instead of department seniority, before Irene Shank's case." Indeed, Cassidy, when pressed, finally told Shank that "if [her] interpretation" of the personnel manual "was correct then the manual would have to be rewritten."

On March 3, 1980, when Shank presented herself for employment, management assigned her to the six-man automatic line. One of the positions on this line was a "sit down" job. The six employees usually rotated. Cassidy told Shank that if the other workers on the line do not complain, she could work there performing the "sit down" job. However, some 2 weeks later, on March 17, Shank was summarily laid off. Cassidy then apprised Shank that she was observed standing for two 8-hour shifts and therefore would have to rotate with the five other workers. Shank explained to Cassidy that she did not stand for two shifts. Her leg was propped up. Nevertheless, she was laid off and not recalled until a few weeks after the April 18 representation election. Significantly, prior to the election, Shank's "tapper job" became available. Management, nevertheless, did not offer her this position at the time.

I find and conclude here that the reason why Respondent refused to reinstate employee Shank to her "tapper job" on or about March 3, why Respondent some 2 weeks later on March 17 laid her off from her job on the automatic line and why management did not recall her until after the April 18 election even though her "tapper job" became available during this period, was to further demonstrate to the unit employees the Employer's intense opposition to union representation. The Employer, by its disparate application of its sick leave and department seniority policies, kept this known union protagonist out of the plant during the critical period preceding the representation election. The employees could see what had happened to the key union leader, before voting on April 18. Respondent, by this conduct, violated Section 8(a)(1) and (3) of the Act.

D. *The Discriminatory Termination of Recall Opportunities for Certain "Temporary Employee"*

The Company, in the past, has used the services of "temporary employees" at its Lucerne facility. The Company argues, as discussed below, that these "temporaries" should be included in the unit. About 1 month before the representation election, Plant Manager Cassidy started telephoning various of these "temporary employees" to inquire if they wanted to return to work. And, about this same time, the hourly wage rate of the "temporaries" was increased from $3.50 to approximately $4 per hour. Further, one such worker, Marsh, was also asked by company counsel to state at the Board-conducted representation hearing that she was "part-time instead of temporary help." Marsh, however, credibly explained that she was never "referred to as a part-time employee." (Also see G.C. Exh. 26.)

Three former temporary employees—Randolph, Marsh, and Black—related their conversation in March with Plant Manager Cassidy, pertaining to their recall. Randolph told Cassidy that she "was working" at the time, and Cassidy indicated to her that he would "keep [her] in mind for a permanent position." Marsh explained to Cassidy that she "couldn't work the afternoon shift" because of her young children, and Cassidy stated to her that "he would keep [her] in mind" in the future. Black disclosed to Cassidy that she was pregnant, and Cassidy advised her that he could not, under these circumstances, hire her, "but to keep in contact with them." Nothing was said to these former "temporaries" about being removed from a so-called employee list.

Later, on March 23, the Union held its final meeting with the Lucerne employees before the scheduled election. Present at this meeting were both employees who supported the Union and employees who opposed the Union (known as SCAB). Former "temporaries" Randolph and Marsh attended this meeting and sat with the union supporters. Rainey, an employee opposed to the Union, took an attendance "list" at this meeting. Rainey later discussed this meeting with Supervisor Rhoades, whose antiunion conduct has been detailed *supra*.[31] This

[31] Insofar as Rainey claims that she did not disclose the contents of her attendance "list" to Rhoades, or other members of management, I do

Continued

was the "only" union meeting ever attended by former "temporaries" Randolph and Marsh. About 5 days later, Cassidy notified Randolph, Marsh, Black, and three other "temporaries," by certified mail, that they were being "removed from our permanent part-time employee list" because they "refused recall."

The credible evidence of record establishes that there was never any such "list"; that "temporaries," in the past, were never referred to as "regular part-time employees"; and that the Employer, in the past, never sent such letters to its "temporaries." Indeed, Randolph, Marsh, and Black were not told in their telephone conversations with Cassidy that they would not be considered for recall because they were not available for work on March 24. I find and conclude on this record, including Respondent's strong opposition to union representation and its resort to coercion and discrimination, that the only reason why it sent such certified letters to its "temporaries" was because it was told that Randolph and Marsh had joined the union supporters and it did not want them to vote in the election. Further, I find that Respondent sent these letters to the four other "temporaries" in an attempt to conceal its unlawful effort to eliminate the two union supporters from the potential unit.

Accordingly, Respondent discriminated against all six "temporaries" by the foregoing conduct. However, since the General Counsel only alleges that Respondent discriminated against Randolph, Marsh, and Black, I must therefore limit my findings to them.

E. *The Discriminatory Refusal To Assign Roudebush as Temporary Supervisor*

Counsel for the General Counsel argues "that the evidence establishes that Respondent failed to select Roudebush for a temporary supervisor position" in March 1980 "because of her Union activities," and instead "selected Smith, Wannett and Reinhard" for such positions "to reward them for their anti-Union" efforts. Counsel for Respondent argues that the Employer "based its decision on [Roudebush's] attendance record and lack of dependability." On the credible evidence of record, summarized in section G, above, I find and conclude that Respondent—as part of its attempt to deter the Lucerne employees from voting for union representation at the April 18 representation election—withheld the temporary supervisor assignment from Roudebush because of her known union activities and rewarded Smith, Reinhard, and Wannett with such promotions because of their efforts to oppose the Union, in violation of Section 8(a)(1) and (3) of the Act.

Roudebush attended the first union meeting which, as found above, was spied upon by Respondent. She openly supported the Union throughout the campaign and solicited the union support of her coworkers. She attended the March 4, 1980, representation hearing on behalf of the Union. Supervisor Rhoades "knew" that employee Roudebush was "for the Union." At various times throughout 1979 and again during early 1980, Roudebush held the temporary assignment of supervisor on the "manual line." She would, while serving in this capacity, receive 50 cents more per hour. She and coworker Lamar (who also served in such a capacity in the past) had more seniority in their department than any other employee.

In March 1980, some 3 or 4 weeks before the election, Respondent declined to offer Roudebush one of the three available temporary supervisor assignments, assertedly because of her "absenteeism" and "lack of dependability." It is true, as counsel for Respondent contends, that Roudebush had a bad attendance record. (See, generally, G.C. Exh. 41.) However, Roudebush's attendance record had not prevented the Employer from making such supervisory assignments to her in 1979 and early 1980. Indeed, Plant Manager Cassidy acknowledged that after he gave Roudebush a written warning for "excessive absenteeism" in early 1980, her attendance "improved considerably." And, an examination of the absenteeism records of employees Smith and Reinhard, who had not previously been given such assignments by the Employer, shows that their attendance similarly left much to be desired.[32] Respondent's other alleged reason for withholding this assignment from Roudebush was her "lack of dependability." Respondent cites the two occasions when Roudebush walked off her job. However, these incidents did not prevent Respondent from making Roudebush a temporary supervisor in the past. Indeed, Supervisor Rhoades did not even rely upon these incidents or report them to Plant Manager Cassidy.

Under all the circumstances present here, including management's antiunion animus, the timing of this action, the belated and shifting nature of management's alleged reasons for its action, and the failure of these reasons to withstand close scrutiny, I find that management was again attempting to demonstrate to the employees that those who supported the Union would be punished and those who opposed the Union would be rewarded.

F. *The Antiunion Activities of "SCAB" and Respondent's Responsibility for This Conduct*

Counsel for the General Counsel argues that members of an antiunion employee group known as "SCAB" coercively interrogated and threatened employees and that the Employer is responsible for this and related conduct. Counsel for Respondent argues that the Employer "cannot be held accountable for conduct of voting employees engaged in anti-Union conduct." The unlawful conduct which the General Counsel would thus attribute to the Employer by this contention is essentially similar to the numerous acts of misconduct discussed and found above. Accordingly, it would appear unnecessary to further encumber this decision with findings of additional coercive interrogations and threats. In any event, I find

not credit her testimony. She admittedly revealed the name of one coworker present at that meeting to Rhoades. And, as found, she actively opposed union representation with members of management.

[32] For example, as G.C. Exh. 41 shows, Smith was off sick some 21 days in January and some 12 days in February 1980, shortly prior to her supervisor assignment. Reinhard was off sick about 15 days and had 4 excused absences in 1979. Further, while the record (G.C. Exh. 41) is not entirely clear, Reinhard apparently did not work the entire month of September 1979.

and conclude on this entire record that Respondent, by its conduct throughout this campaign, led its Lucerne employees to believe that the so-called SCAB members spoke for and with the approval of the Employer. Consequently, under settled principles of agency law, Respondent Employer is now estopped to deny responsibility for the coercive interrogations and threats made by the "SCAB" group. Cf., *Community Cash Stores, Inc.*, 238 NLRB 265 (1978).

Thus, employee Baker credibly recalled how, about 1 week before the election, "SCAB" member Davis was "showing" an antiunion petition "to other employees on the assembly line." (See G.C. Exh. 29.) Employee McCormick credibly recalled how she was approached by Davis with this petition while she was working, and then asked to sign. (Also see the corroborative testimony of employee Molestatore.) And, employee Jackson credibly testified with respect to this petition (G.C. Exh. 29), in part as follows:

> Q. Now, what if anything did you do at that point, when you observed him passing this paper around?
>
> A. I asked [Supervisor] Geno Bartoletti what the paper was.
>
> Q. And what was his response, if you can recall?
>
> A. He told me that it was a petition, that it was nothing political, that they just wanted to show the Company who all was behind them.
>
> Q. Okay, and from that conversation, what did you understand Bartoletti to mean when he said they?
>
> A. "SCAB."
>
> Q. Do you recall if Bartoletti said anything else with regard to the petition or what would be done with the petition?
>
> A. Yes, they said that they were going to post it.
>
> Q. Did he say where?
>
> A. On the bulletin board.
>
> Q. And did you observe Bartoletti or any other supervisor attempt to stop Davis?
>
> A. No.

In addition, Jackson credibly related how "SCAB" member Reinhard, in the presence of representatives of Respondent, asked employees at work to take "vote no" buttons.

Employee Janice Smith credibly related the following conduct involving "SCAB" members Rainey and Reinhard:

> Directing your attention to about late March of 1980, do you recall speaking with any employees about a meeting with Management?
>
> A. Yes
>
> Q. And who was this?
>
> A. Jean Rainey.
>
> Q. Do you recall what was said that time by Rainey?
>
> A. Jean Rainey said that she was called into a meeting with Bruce Cassidy and John Einstein and Bruce Cassidy said that this was a meeting on the nine most boisterous SCABS and that they could do anything short of physical violence to the Union people, make sure the Union person threw the first punch so that they would be the one fired.
>
> Q. Now, do you recall any members of SCAB talking about what would happen if the Union got in?
>
> A. Yes.
>
> Q. Okay, who did you hear this from, which SCABS are you talking about?
>
> A. Carol Reinhard and Jean Rainey.
>
> Q. And what do you recall them saying and around when did they make these statements?
>
> A. Well, during the whole Union campaign they kept saying that if the Union came in, the plant would probably shut down because they couldn't afford to pay us the wages the Union would ask.
>
> Q. And do you ever recall seeing a "vote no" button?
>
> A. Yes.
>
> Q. About when did you see one, approximately?
>
> A. About a week before the election.
>
> Q. And could you describe the circumstances behind your seeing the "vote no" button?
>
> A. Yes, I was running the header and Carol Reinhard came up and tapped me on the shoulder and I turned around and she had a brown envelope and it said take one on it so I put my hand in and took one out and it was a "vote no" button and I said no thanks.
>
> Q. I show you what's been marked previously as General Counsel's Exhibit Number 30, can you identify that please?
>
> A. Yes, that's the button.
>
> Q. Was this during working time?
>
> A. Yes.[33]

In sum, I find and conclude that "SCAB" members, by asking employee at work to sign an antiunion petition and to accept "vote-no" buttons, were, in effect, "poll[ing] the employees about their sentiments regarding the Union." Cf. *Great Western Coca Cola Bottling Co., et al.*, 256 NLRB 520 (1981). "SCAB" members, at the same time, were threatening employees with plant closure if they chose union representation. Such conduct, assessed in the context of the violations found above, is plainly coercive.[34]

[33] Rainey, in her testimony, recalled a meeting between antiunion employees and Company Agent Alex Hornkuhl, at which time the antiunion employees were told that they "could do anything [they] wanted to verbally."

Insofar as Rainey and Davis assert in their testimony that the activities of "SCAB" members were conducted during nonworking time and/or were without Respondent's approval or knowledge, I find such testimony and related assertions by Respondent incredible here.

[34] Counsel for Respondent argues that the General Counsel, while amending his complaint in this proceeding, "dropped from General Counsel's case" the above allegation pertaining to the "SCAB" group. I reject this contention. A fair reading of this record does not support a finding that the General Counsel dropped, abandoned, or waived the above issue. In any event, the activities of "SCAB" members and the Employer's responsibility for them were fully litigated before me.

Further, in this context, I note that the credible evidence of record shows that counsel for Respondent, when he was purportedly investigating the activities of "SCAB" and his client's responsibility for such con-

Continued

G. *The Employer's Refusal To Bargain With the Union; A Bargaining Order Is Appropriate*

The General Counsel contends that, under the principles stated in *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575 (1969), Respondent Employer violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as of February 12, 1980, when the Union's demand for recognition was received by the Employer, and that a bargaining order should issue. Respondent asserts that the Union did not have valid authorization cards from a majority of employees in the stipulated appropriate unit as of the demand date and that a bargaining order is, on this record, an appropriate remedy. The controlling legal principles have been restated and applied on many occasions. See, e.g., *Red Barn System, Inc.*, 224 NLRB 1586 (1976), enfd. 574 F.2d 315 (6th Cir. 1976); *N.L.R.B.* v. *S. E. Nichols-Dover, Inc.*, 414 F.2d 561 (3d Cir. 1970); *N.L.R.B.* v. *Daybreak Lodge*, 585 F.2d 79 (3d Cir. 1978); *N.L.R.B.* v. *Production Industries*, 425 F.2d 1206 (6th Cir. 1970). In brief, while the Board normally views a secret-ballot election as the most satisfactory method of resolving questions of representation, it has long been recognized that certain special circumstances may require reliance upon other indicia of employee sentiment. Where a union has obtained valid authorization cards from a majority of employees in an appropriate unit but the employer engages in a course of conduct which tends both to destroy this majority and to negate the likelihood of a future fair election, the Board has concluded, with Court approval, that the *status quo ante* would be most nearly restored and the policies of the Act best effectuated by a bargaining order. The Supreme Court stated the rule in *Gissel Packing Co.*, *supra*, as follows:

> In fashioning a remedy in the exercise of its discretion, the Board can properly take into consideration the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election [or a fair rerun] by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue.

As discussed below, I find and conclude on this record that on February 12, 1980, when Respondent received the Union's initial demand for recognition,[35] the Union had the support and signed valid authorization cards from a majority of employees in the stipulated appropriate unit; Respondent, in an attempt to undermine and destroy the Union's support, engaged in extensive and pervasive unfair labor practices; and the only effective means of remedying these unfair labor practices is by a bargaining order. Accordingly, the Employer has violated Section 8(a)(5) and (1) of the Act, as alleged. For, as the Board noted in *Red Barn System, Inc., supra*:

> This is not one of those cases where the unfair labor practices committed are either so minor in character or so isolated in nature that no bargaining order remedy is required. On the contrary, the conduct engaged in by Respondent can only properly be described as a massive and blatantly unlawful response to employee organizational activities, the impact of which reached all employees in the bargaining unit.[36]

1. The composition of the appropriate unit

The parties have stipulated that the unit alleged in the complaint is appropriate (see fn. 1, *supra*). The parties have stipulated that on February 12, 1980, the Employer received the Union's demand for recognition as bargaining agent of the unit employees. The parties have further stipulated that the 35 employees named below were included in this unit during the pertinent time period.[37] A dispute exists as to whether the 13 individuals named below should also be included in the unit during this pertinent period.[38]

duct, shortly before the scheduled representation election, unlawfully questioned at least one employee. Thus, as employee Jackson credibly testified, she was called to a meeting in the plant conference room and then asked by counsel for the Employer, *inter alia*, "if we thought in any way that the Company was behind SCAB" and "what we all thought about the charges that was against the Company." An employee's personal and subjective reaction to coercion conduct and the charges pending are not a legitimate or bona fide subject of an attorney's preparation for litigation. Cf. *N.L.R.B.* v. *Neuhoff Brothers, Packers, Inc.*, 375 F.2d 372, 376-378 (5th Cir. 1967), and cases cited.

[35] Union Representative Radulovich credibly testified that he renewed this demand for recognition on March 4, 1980, at the Board-conducted representation hearing.

[36] Also see *Trading Port, Inc.*, 219 NLRB 298 (1975).

[37] The employees are:

Baker	Molestatore
M. Smith (Beck)	Penrose
Brown	Peterson
Clawson	Rainey
Corbelli	Reeger
Davis	Reinhard
Harmon	Roudebush
Hippchen	Sebring
Hollingsworth	Shank
Hopkins	Slater
Hughes	D. Smith
Jackson	J. Smith
Lamar	Stewart
McCormick	Wannett
McCurdy	Walk
McKeehan (Stiteler)	Wike
Milam	Withey
	Zapotocky

[38] They consist of 10 temporary employees (Baker, Ball, Black, Kreger, Lindsey, Marsh, Patterson, Randolph, Snyder, and Travis); a student employed as part of a program with his school (Sobonya); an alleged supervisor (Jennings); and a person who was not working during the critical time period because of pregnancy (Shultz).

a. *The "temporaries"*

Counsel for Respondent argues that 10 so-called temporaries should be included in the stipulated unit. Counsel for Respondent states "that these individuals had, at the time in question, a present interest in the terms and conditions of employment and shared a community of interest with the full-time employees. "Counsel for the General Counsel argues that these 10 'temporaries' 'lack a community interest with the full-time and regular part-time production and maintenance employees and should be excluded'" for purposes of determining unit composition during the critical period.

The essentially undisputed and credible evidence of record shows that the Company, in the past, has utilized the services of temporary employees. The temporaries were informed, when hired, that their job was only temporary. They were required to sign a form acknowledging that their employment is only "for a term of approximately 30 to 120 days at an hourly rate of $3.50"; "no company paid benefits will be furnished to such temporary employees"; and, "should any temporary employee later be hired as a permanent employee, all normal benefits furnished by this company will start 90 days from the date of notice" thereof. (See G.C. Exhs. 24 and 26.) Respondent has terminated such temporaries without notice when its production needs have been satisfied. The $3.50 per hour paid to the temporaries (prior to Respondent's attempt to grant them a raise and include them in the unit during this proceeding) was significantly below the hourly rate paid to regular employees. (Cf. G.C. Exh. 53.) The temporaries were also excluded (prior to this proceeding) from Respondent's across-the-board wage increase granted to regular employees.

General Counsel's Exhibit 42, a list of Respondent's temporary employees, shows that as of February 12, 1980, when the Union's demand for recognition was received by Respondent, Respondent had employed some 46 temporaries. Only 4 of these 46 became permanent.[39] And, only 3 of these 46 temporaries were rehired by Respondent for a new 30- to 120-day period prior to February 12, 1980.[40] Temporaries, when terminated, were told that they were no longer needed. They were not advised that they might be recalled or questioned about their future availability. Further, by late January 1980, all of the temporaries had been terminated and none were working on February 12, when the Employer received the Union's demand for recognition. Indeed, none were working on March 4, 1980, when the Union renewed its demand for recognition at the Board-conducted representation hearing.

Under all these circumstances, I would exclude the "temporaries" from the unit. I find here that the "temporaries" did not share a sufficient community of interest with the "full-time and regular part-time production and maintenance employees" and, further, had no reasonable expectancy of recall when terminated. See, generally, *American Federation of State, County and Municipal Employees (Zwerdling, Mauren and Papp)*, 224 NLRB 1057, 1058 (1976), and *United Telecontrol Electronics, Inc., et al.*, 239 NLRB 1057 (1978).

b. *Soboyna*

Respondent would include Michael Soboyna in the unit during the critical period. The General Counsel would exclude him. Soboyna was employed from February 7 to July 21, 1980. As Plant Manager Cassidy acknowledged, Soboyna was hired on February 7 and terminated on July 21, 1980; his wage rate was $3.10 per hour; he was then a high school student; he worked "four to six hours" each day "depending on classes"; he was part of a "work co-op program" and "got credit for schooling . . . while he was working"; his "hours during the day" depended on his "schedule at school" and "varied"; and "he was a draftsman":

> He had a drafting table that he worked on, he was out in the plant, and made sketches of things that we needed drawn up from the factory, and then he would come in and draw them up on the drafting machine.

The draftsman table was located in Plant Manager Cassidy's office where Soboyna did his drawings. He reported to Plant Manager Cassidy and received no fringe benefits.

I find and conclude that Soboyna was a student employee who lacked a sufficient community of interest with the bargaining unit employees and, therefore, should not be included for purposes of determining unit composition during the critical period. His wages were significantly lower tham those of the unit employees; he was part of a student program; he received no fringe benefits; he worked under the plant manager in the plant manager's office; his work was not the routine production and maintenance work; and he did not work regular shift hours. See, generally, *United Telecontrol Electronics, supra.*

c. *Jennings*

Respondent would exclude Melvin Jennings from the unit during the critical period as a supervisor. The General Counsel "submits that although Jennings is *currently* a supervisor, as of the demand dates [February 12 and March 4, 1980] Jennings was an employee." (Emphasis supplied.) Plant Manager Cassidy acknowledged that the personnel file of Jennings shows that "there is a payroll change notice" for Jennings "dated August 11, 1980, and that indicates that [Jennings] went from maintenance . . . to supervisor." According to Cassidy, it was on August 11, 1980, when Jennings "went from $7.12 per hour to $15,500 per year." And, as Jennings explained, the August 11 change in his status gave him a raise of "about $3,000 . . . yearly." Further, former accountant Mikulan testified that, while she was employed at Lucerne, Jennings was hourly paid, received overtime, punched a timeclock with the other maintenance employees, was

[39] The four temporaries who became permanent, prior to February 12, 1980, were Slater, Yarchak, McCurdy, and Zapotocky. I note that six other temporaries were made permanent from late July through September 1980, after the representation election in this case.

[40] Marsh, Black, and McKee were the only temporaries rehired prior to February 12, 1980. Two others (Travis and Lindsey) were rehired on March 24, 1980, after the representation hearing.

posted as "indirect labor," did not have the "power to hire, fire, or discipline employees," and was coded on the payroll as maintenance and not supervisory.

Jennings claimed that he was a lead maintenance man for over a year prior to the August 11 change in his status and that he in fact had scheduled work for the four other maintenance workers. He recalled that he was then "making like a quarter more than they was." However, as Mikulan further explained, Jennings was one of the first five to be hired in the plant and therefore he was there "for a lot more raises than the other men" And, Roudebush recalled that, during the critical period, she saw Jennings on the floor performing maintenance-production work about 95 percent of the time.

Jennings related that he had attended supervisory school during 1979 and, further, about March 21, 1980, after the Board-conducted representation hearing in this case, he was notified by Respondent that he was, in effect, "not allowed to attend any meetings dealing with . . . any Union functions or whatever." Earlier, however, about November 30, 1979, Jennings had signed a union card and mailed it back to the Union. Further, Jennings acknowledged that, while serving as lead maintenance man, John Graham supervised him, the four other maintenance workers and two machine shop workers.

"A supervisor" is defined in Section 2(11) of the Act, as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Actual existence of true supervisory power is to be distinguished from abstract, theoretical or rule-book authority. It is well settled that a rank-and-file employee cannot be transformed into a supervisor merely by investing him or her with a "title and theoretical power to perform one or more of the enumerated functions." *N.L.R.B.* v. *Southern Bleachery & Print Works, Inc.*, 257 F.2d 235, 239 (4th Cir. 1958), cert. denied 359 U.S. 911. What is relevant is the actual authority possessed and not the conclusory assertions of a company's officials. And while the enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive, the section also "states the requirement of independence of judgment in the conjunctive with what goes before." *Poultry Enterprises, Inc.* v. *N.L.R.B.*, 216 F.2d 798, 802 (5th Cir. 1954). Thus, the individual must consistently display true independent judgment in performing one of the functions in Section 2(11) of the Act. The exercise of some supervisory tasks in a merely "routine," "clerical," "perfunctory," or "sporadic" manner does not elevate a rank-and-file employee into the supervisory ranks. *N.L.R.B.* v. *Security Guard Service, Inc.*, 384 F.2d 143, 146-149 (5th Cir. 1967). Nor will the existence of independent judgment alone suffice; for "the decisive question is whether [the individual involved has] been found to possess authority to use [his or her] independent judgment with respect to the exercise by [him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act." *N.L.R.B.* v. *Brown & Sharpe Manufacturing Company*, 169 F.2d 331, 334 (1st Cir. 1948). In short, "some kinship to management, some empathetic relationship between employer and employee must exist before the latter becomes a supervisor for the former." *N.L.R.B.* v. *Security Guard Service, Inc., supra*, 384 F.2d at 149 (1967).

On this record,[41] I find and conclude that Jennings did not sufficiently possess the authority to use his independent judgment with respect to the exercise by him of one or more of the specific authorities and indicia enumerated in Section 2(11) of the Act. He has not been shown here to have "responsibly" directed the four other maintenance workers or to have "effectively" recommended such action. Indeed, the four other maintenance workers, Jennings, and two shop workers were all supervised during this pertinent time by supervisor Graham. Jennings, when the demand for recognition was received on February 12, and again on March 4, was, in my view, an employee and not a supervisor.

d. *Shultz*

The General Counsel argues that Janet Shultz was not employed on the demand dates of February 12 or March 4, 1980, and therefore should not be included in the unit. Respondent argues that she was on pregnancy leave from November 1979 until August 1980. The General Counsel states (G.C. Exh. 41):

> The only testimony presented was that Shultz was not working because she was pregnant, but that she is currently working for Respondent. Although counsel for the General Counsel concedes that an employee on pregnancy leave maintains her status as an employee and is eligible to vote, there is no evidence that Shultz was on pregnancy leave other than a self-serving notation made on her absentee calendar in August 1980, long after the demand date. There was no evidence that Respondent had a recognized pregnancy leave policy.

Although the record is not entirely clear here and this issue is not free from doubt, I find that Respondent has sufficiently demonstrated that Shultz, an employee, was on pregnancy leave during the demand dates and later returned to work. I would include her in the unit during the critical period. Cf. *Winco Petroleum Company*, 241 NLRB 1118, 1131-32 (1979).

In sum, I find that as of February 12 and March 4, 1980, the stipulated appropriate unit consisted of 37 employees.

[41] I credit the above testimony of Cassidy, Jennings, Roudebush, and Mikulan as fairly reflecting Jennings' job duties during the pertinent period.

2. The authorization cards

The stipulated appropriate unit, as found above, consisted of 37 employees as of February 12, 1980. The General Counsel contends that, "as of the initial demand on February 12, the Union had obtained 21 valid and authentic authorization cards executed by employees in the unit"; that the cards "contain clear and unambiguous language"; and that each card "states on its face that the signer requests and accepts membership in the Union and authorizes the Union to represent" the employees. (See G.C. Exhs. 21(a) through (v), the cards signed by the unit employees.)[42] Respondent "asserts that the following [nine] cards must be dismissed as invalid due to misrepresentations made by Union adherents in soliciting the cards"—"The cards of Baker, Walk, Reeger, Molestatore, Zapotocky, Steward, Wike, Peterson, and Withey were solicited through misrepresentations and are therefore invalid."[43]

The controlling legal principles were restated in *Winco Petroleum Company*, 241 NLRB 1118, 1132–33 (1979), as follows:

> [E]mployees as a rule are not too unsophisticated to be bound, and should be bound, by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature; and that there is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and telling him that the card will probably be used first to get an election. In this regard, because unions usually expect (as the Board pointed out in *Levi Strauss* [172 NLRB 732 (1968)]), to use the election route in gaining representation rights, and obtain authorization cards primarily to make the required showing of employee interest, the fact that a union may have stressed the election use (at a time it thought it might have a fair election unobstructed by substantial independent unfair labor practices), rather than the alternative use of proving majority interest in representation, does not preclude giving probative value to unambiguous authorization cards. Absent some other disability, the use or proposed use of the cards to secure an election doe not alter their essential character as union designations.
>
> Second, an employee's thoughts or afterthoughts as to why he signed a union card and what he thought that card meant cannot negative the overt action of having signed the card, *Joy Silk Mills* v. *N.L.R.B.*, 185 F.2d 732, 743 (D.C. Cir. 1950), enforcing 85 NLRB 1263, cert. denied 341 U.S. 914; *N.L.R.B.* v. *Gissel Packing Co., supra*, 395 U.S. [575] at 608 (1969); *Levi Strauss supra*, 172 NLRB at 734.
>
> Third, where employees testify under the eye of company officials about card signing events which occurred much earlier and prior to company activities that constituted unfair labor practices, there is wisdom in requiring fairly strong evidence of misrepresentation before adjudging the signed cards invalid, *N.L.R.B.* v. *Southbridge Sheet Metal Works*, 380 F.2d 851, 855 (1st Cir. 1967). For it is certainly conceivalbe that the same threats and benefits which shook an empoyee's original support of the union also altered the employee's memory of the events that occurred before the presentation of such threats and benefits. By the time of trial, though employees may have changed their minds with respect to union affiliation, the crucial question in a refusal to bargain case is whether the union had the support of a majority of the employees in an appropriate bargaining unit at the time the request to bargain was made, and not whether that support remains intact months later. *N.L.R.B.* v. *International Union United Automobile Aerospace and Agricultural Implement Workers of America, UAW-AFL-CIO [Preston Products Co.]*, 387 F.2d 801, 807–808 (D.C. Cir. 1967), enforcing 158 NLRB 322; *Levi Strauss, supra*, 172 NLRB at 735.

a. *Baker*

The first of the nine cards specifically disputed by Respondent is that of employee Baker (G.C. Exh. 21(b)). Baker testified that he signed his card on November 20, 1979, at the first union meeting; that he read the card before signing it; and that he understood that the signing of the card was in support of the Union. Baker further claimed that "I signed the card because I wanted to have a vote"—"He [Radulovich] said that we needed so many cards in order to have a vote and that's why I signed the card." However, Baker acknowledged that Union Representative Radulovich "didn't tell me that was the only purpose for signing it." And, Radulovich, Clawson, Shank, and Roudebush, all present on November 20, credibly denied that Baker, or any other employee, was told that the only purpose of the card was to obtain an election.

Baker, shortly prior to this hearing, checked the "yes" box on a questionnaire (Resp. Exh. 1) prepared by counsel for Respondent. The questionnaire states: "If you signed a union card, did the person asking you to sign tell you that the only purpose of the card was to get an election." Baker, however, when questioned by counsel for Respondent at this hearing, credibly insisted: "He [Radulovich] didn't tell me that was the only purpose for signing it."

I find and conclude that Baker voluntarily signed a clear and unambiguous authorization card; he read the card before signing it; he understood that he was signing in support of the Union; and, despite his checking the "yes" box on counsel's questionnaire shortly before this hearing, no misrepresentation was made to him, as claimed.

[42] The General Counsel notes that one additional card, that of employee McCurdy (G.C. Exh. 21(k)), was signed on February 17, 1980, after the initial demand date. As stated, the Union renewed its demand on March 4, 1980.

[43] Counsel for Respondent only "specifically disputes the validity of the cards so designated" in his brief. However, he generally "asserts that all cards may have been solicited through varying degrees of misrepresentation."

b. *Walk*

The second card specifically disputed by Respondent is that of employee Walk. (See G.C. Exh. 21(h).) Walk testified that he signed his card on January 31, 1980; that he read the card prior to signing it; that he understood "what that meant":

> [I]t said that the Union would represent me if I had my signature on that card in any legal matters that involved the Union coming into the Company, anything like that.

Further, Walk explained:

> [S]omeone asked me, would you sign a Union card if you had one, and I said I would have to think about it, which is what I did, and so they gave me the Union card, and so I took it home, and I looked it over, and I thought it out, and finally I signed.

Walk admittedly had checked the "yes" box on counsel for Respondent's questionnaire (Resp. Exh. 2), asking "if you signed the Union card, did the person asking you to sign, tell you that the only purpose of the card was to get an election." Walk, in his testimony at this hearing, credibly explained that "I was confused." Walk insisted: "The only thing that I figured that card was for, was to get me in the Union, as a member, get me membership in the Union."

I find on this record that Walk voluntarily signed his card designating the Union as his representative and that no misrepresentations were made to him, as claimed. I find the "yes-no" questionnaire of counsel for Respondent (see Resp. Exh. 2) to be unreliable evidence of alleged misrepresentations here, especially when viewed in the context of management's extensive threats, coercion, restraint, and discrimination calculated to destroy the Union's employee support.

c. *Reeger*

The third card attacked by Respondent is that of employee Reeger. (See G.C. Exh. 21(j).) Reeger testified that he received his card in the mail; that he signed the card on November 30, 1979; that he then "mailed it" to the Union; that he had read the card before he signed it; that he understood "what it stated"; and that he understood that it was in support of the Union. On cross-examination by counsel for Respondent, Reeger was asked: "Isn't it a fact that you signed that card only to get an election at Lucerne?" Reeger replied: "That was my own impression"—"that was my thoughts."

Elsewhere, Reeger testified: "I was told that the only purpose of signing the card was to get an election." Reeger claimed that Clawson and Roudebush told him this. However, when Reeger was asked: "What did they tell you?" he explained: "That they needed a certain percentage to hold the election." Reeger further explained:

> She [Clawson] told me the purpose of having these cards and signing them if so desired was to have a certain percentage of them, they needed a certain percentage of them in order to have an election.

Reeger added that:

> In Company meetings they [management] had stated that they could take you to Court and they could use it [the card] against you in a court of law.

Reeger acknowledged that Clawson and Roudebush were not present when he signed his card—Clawson and Roudebush did not give him his card.

Finally, Reeger testified:

> I was the one along with Irene Shank to start this Union. I bowed out because of, putting it bluntly, cowardness, being afraid of losing my job, of talk that was going around the Company at the time.

I find here that Reeger voluntarily signed his card on November 30 after receiving it in the mail and reading it; he understood that the card was in support of the Union; and no misrepresentations of an election purpose were made to him, as claimed by Respondent. Reeger's "impression" or "thoughts" that the card was "only to get an election" do not, under the circumstances present here, render his card invalid. I note, in this respect, that Reeger was one of the initial supporters of the Union.

d. *Molestatore*

The fourth card disputed is that of Molestatore. (See G.C. Exh. 21(l).) Molestatore testified that he read and signed his card on January 30, 1980; and that no one told him that the only purpose of the card or the sole purpose of the card was to get an election. However, he also signed an antiunion petition after being solicited at work by "SCAB" member Davis (G.C. Exh. 29(a)). On cross-examination by counsel for Respondent, Molestatore was asked if he checked the "yes" box on counsel's questionnaire, stating: "if you signed a Union card did the person asking you to sign the Union card tell you the only purpose of the card was to get an election." (See Resp. Exh. 4.) Molestatore admitted that he had checked the "yes" box, but explained:

> Well, whenever I read it (Resp. Exh. 4), I read it quick because I was busy, and I misunderstood the question, and I marked yes.
>
> * * * * *
>
> I wasn't thinking.

I find that Molestatore voluntarily executed his card on January 30 and no misrepresentations were made to him, as claimed. I find counsel for Respondent's questionnaire, under the circumstances present here, unreliable.

e. *Zapotocky*

The fifth card disputed by Respondent is that of Zapotocky. (See G.C. Exh. 21(o).) Zapotocky testified that she was given her card by Union Representative Radulovich in the plant parking lot; she read it, signed it on December 3, 1979, and mailed it to the Union; and Radulovich, when he gave her the card, "asked me to read the

information inside his envelope and that was all." She understood that signing the card was in support of the Union.

Zapotocky also testified that "before I signed the card someone told me that the purpose of the card was to see if there was a majority of employees interested in having an election." She could not "recall" who made the above "statements" to her. She was, however, never told that the only purpose of the card was to get an election.

On this record, I find that Zapotocky voluntarily signed her card on December 3, 1979, and the Union, or its representatives, did not misrepresent the purpose of the card to her. At most, she overheard some misstatements or rumors on the contemplated use of cards. Of course, as shown above, Respondent, in its literature to the employees which was posted and distributed about this time, made clear to the employees the binding obligation of signing such cards. (See G.C. Exhs. 8 and 9.)

f. *Stewart*

The sixth disputed card is that of Stewart. (See G.C. Exh. 21(p).) Stewart testified that she signed her card on January 14, 1980; that she then mailed it to the Union; and that, before signing this card, she could not recall anyone telling her that the only purpose of this card was to get an election. Stewart heard, before signing this card, that the card was "to have the [Union] act as our . . . committee"—she was not told that the "card was to get an election." Elsewhere, she testified that she *understood* that the purpose of signing a card was to have an election. She could not remember who made such a statement. She had been given her card by Union Representative Radulovich. She could not recall him saying "anything about it" at the time. She admittedly read the card before signing it and returning it to the Union.

On this record, I find that Stewart voluntarily read and signed her card and no misrepresentation was made to her, as claimed.

g. *Peterson*

The seventh disputed card is that of employee Peterson. (See G.C. Exh. 21(r).) Peterson testified that she signed her card on or shortly prior to December 12, 1979; that she was given her card by Union Representative Radulovich who "asked me to read the contents of the envelope and have a nice day"; that she read the card before signing it; and that she returned it to the Union.

Peterson further testified that she "wanted to know why" the Union's "name was on the card" and, consequently, she "asked" some unidentified person or persons, and "then I was told it was to get an election, in order to organize for a Union." Further, counsel for Respondent asked Peterson: "is it your testimony that you received the same response every time that it was only to get an election at Lucerne." Peterson answered "yes." Again, she could not "remember" who she had asked. Further, she recalled receiving from the Employer a copy of General Counsel's Exhibit 9, dated December 4, 1979, where the Employer warned the employees about the consequences of signing such cards.

I find here that the Union, or its representatives, did not misrepresent the purpose of this card to Peterson; that she voluntarily signed the card after reading it; and that she thereby designated the Union as her representative.

h. *Wike*

The eighth disputed card is that of Wike. (See G.C. Exh. 21(q).) Wike acknowledged that he had signed his card and dated it January 18, 1980. Wike claimed:

> The representative from the Union told me that the only purpose of signing the card was to get an election. This was said to me before I signed the card.

Wike further testified, in part as follows:

> Q. Mr. Wike, did you attend any Union meetings?
> A. Yes.
> Q. How many Union meetings did you attend?
> A. It was either one or two. I'm not sure.
>
> * * * * *
>
> Q. Now, you say one or two meetings?
> A. Yeah, I'm not sure.
> Q. Where was the meeting or meetings that you attended?
> A. They were down in Homer City.
>
> * * * * *
>
> Q. Could it have been [at] the Kiwanis Club?
> A. Yes.
> Q. Was it [at] the Kiwanis Club?
> A. Yes, it was.
> Q. And was there a Union representative there?
> A. Yes.
> Q. And who was that Union representative?
> A. Mr. Radulovich.
> Q. Mr. George Radulovich?
> A. Yes, sir, right there, sir.
>
> * * * * *
>
> Q. Is it at that meeting, that Mr. Radulovich supposedly told you that the purpose of signing the card was to get an election?
> A. Yes, it was either him, or one of the other people at the meeting.
> Q. At that meeting?
> A. Yes.
> Q. Did you read the card before you signed it?
> A. Yes.
> Q. Did you understand that in signing the card, that was in support of the Union?
> A. I was told it was strictly to get an election, and nothing else.
> Q. At that Kiwanis Club meeting?
> A. Yes.
> Q. Did anyone tell you not to read that card?
> A. No.

Q. Did anyone tell you to disregard the wording on that card?

A. No.

Q. Excuse me?

A. No.

Q. What did you do with the card, after you signed it?

A. I mailed it in.

Q. You mailed it in?

A. I'm pretty sure.

* * * * *

Q. Do you remember receiving such a letter [G.C. Exh. 9, from the Employer]?

A. Yes, I'm pretty sure I have.

Q. And did you read the letter, at the time?

A. Yes.

* * * * *

Q. Did you understand that in signing the card, you could be committing yourself to Union membership?

A. I thought about it this way, but before all this came about, we were told it was strictly for getting enough cards in there, to get a vote for the Union.

* * * * *

Q. Again, you are talking about, when you said, we were told, you are talking about at that Kiwanis Club meeting, is that right, you are talking about at that Kiwanis Club meeting?

A. Okay.

* * * * *

Q. You previously testified concerning, we were told that it was only for an election, you are talking about that statement being made at the Kiwanis Club meeting?

A. I cannot give you a definite answer on that, I don't remember if it was the Kiwanis Club meeting, or some place else.

Q. Mr. Radulovich was there at the time?

A. He was at the meeting, now, when the statement was made, this was a year ago, almost a year ago, January, January, December, I don't remember exactly what dates, what times these meetings were.

Q. You don't recall when the meetings were?

A. No.

Q. I understand that, but the statement was made at a meeting?

A. I'm pretty sure it was, as far as I can remember, although I could be wrong.

Union Representative Radulovich and employee Clawson credibly testified that there were only two employee union meetings at the Kiwanis in Homer City (January 27 and March 23). (See G.C. Exhs. 34 and 35.) Wike, however, had already signed his card before any of these meetings. And, Radulovich, Shank, Clawson, Roudebush, and Baker credibly denied that such misrepresentations were made.

I find here that Wike read, understood, and voluntarily signed his card. I do not credit his assertion that Radulovich, or perhaps someone else, told him that "the only purpose of signing the card was to get an election." I am persuaded, on this record, that no such misrepresentation was in fact made. Wike's testimony, in this respect, becomes confusing, contradictory, and unclear. I also note that Wike had received from Respondent, General Counsel's Exhibit 9, a letter dated December 4, 1979, explaining the legal obligations and consequences arising from signing such a card.

i. *Withey*

The ninth disputed card in that of Withey. (See G.C. Exh. 21(u).) Withey, a 20 year old from Korea who had lived in the United States with her American born husband for about 3 years, testified that she signed her card on January 14, 1980, in the presence of her husband. Withey assertedly did not read the card before signing it, however, as she acknowledged, she "could have read it" before signing it. Withey, although experiencing some difficulty in the use of English, understood that, by signing the card, this would be "helping the Union." Employee Shank had solicited the signature of Withey. A substantial credibility conflict is presented here concerning the sequence of events culminating in Withey signing her card.

Thus, employee Shank testified, in part as follows:

Q. Ms. Shank how many times did you visit Kim Withey's home?

A. Two times.

Q. When was the first time you ever visited her house?

A. January the 14th, 1980.

Q. When was the second time that you visisted her house?

A. February the 13th, 1980.

Q. Are you sure of those dates?

A. Yes sir.

Q. Is there anything that happened that makes you certain of those dates?

A. On both occasions I was up at the plant, and that's all I can recall of the dates.

Q. Would you relate what you did on January the 14th?

A. Yes sir, I went up to the plant to deliver some insurance papers and while I was there I wanted to talk to Judy Roudebush and I noticed she wasn't working that day, and I think Mary Helen [Clawson] told me she was off sick or someone told me she was off sick.

So, after I left the plant I stopped at Judy Roudebush's house and she was home sick, and I placed a call from Judy Roudebush's house to Kim Withey's, asking Kim if she wanted a Union card and she told me yes.

She gave me the address of where she lived. I ask Judy then how to find the place, because I wasn't familiar with Homer City and Judy told me

where this was and then I went to Kim Withey's house with the card.

Q. At what time of day did you arrive at Withey's home?

A. Sometime in the afternoon.

Q. Who was present?

A. Kim Withey and her husband and myself.

Q. What did you observe at her house?

A. When I went into Kim's house, she was working cleaning the stove, she made me a cup of coffee, her Christmas tree was still up at the time, this was a trailer that she lived in and the living room had a sofa, the coffee table in front of the sofa, I sat on the sofa at this end, had my coffee, we talked on Union, we talked about job security if we had a Union, we talked about better fringe benefits if we had a Union, we talked about better wages if we had a Union, and I gave the card to Kim then.

Q. Did you ever tell Kim Withey that the only purpose of the card was to get an election?

A. No sir.

Shank further testified:

> Well, when [she] was signing the card, her husband was there and he helped her to fill out the card, the coffee table, assuming this is the couch where I'm sitting, and here in front was the coffee table, I was sitting on this side of the couch, Kim and her husband were on that end of the coffee table, they both were kneeling. Kim was on the floor, and she was writing on the coffee table, this is when she signed the card, her husband helped her fill it out, he told her where to put her name, where to put the address, and where the date went and things like this and Kim filled it out.
>
> Q. Then what happened, what was said?
>
> A. And then she gave the card back to me, I put [it] in the envelope, I sealed it right there, and I told her I would mail it for her and she said okay.

In addition, Shank related her second meeting with Withey at her home, as follows:

> Q. Now, would you relate what happened on February the 13th, that you can recall?
>
> A. I'd gone up to the plant to deliver some papers and again Judy Roudebush wasn't at work, I stopped at her house, I called Kim Withey's from Judy's house and asked Kim if I could come over and talk to her and she said yes.
>
> Q. Then what happened?
>
> A. I went to Kim's house and I explained to her why I was there.
>
> Q. What did you say?
>
> A. I told her that I had heard she was mad at me, that Geno Bartoletti was telling some girls in the plant that I forced Kim to sign a card and I wanted to know if this was true, she said no, she wasn't mad at me, I did not force her to sign a card.
>
> She told me that she told Management that she had signed the card and that I was the one that gave the card to her, so we left best of friends to my judgment.

Withey testified that Shank brought a union card to her home and Withey then "threw it away." Withey next testified that Shank came to her home a second time, asked her to sign a card, and she again did not then sign the card. Withey next testified that Shank visited her home a third time, at which time Withey signed the card. Withey stated that she did not read the card, although "If I want I read." Withey attributed to Shank the statement: "Only for the election. Withey claimed that she signed the card so "I don't have to talk about the Union anymore and she's [Shank] not coming to my house anymore." Withey recalled that she filled in the date on the card and that Shank did not "write anything on this card." Withey further recalled filling in the address on the card. Withey explained that her husband was present when she signed.

Elsewhere, Withey testified, "[S]he [Shank] say, this only is a start to get a Union and help with the Union." Withey testified, "that's not really important, in trying to get the Union," and so she signed the card. Withey added that Shank had repeatedly aksed her at work to sign a card.

Withey was shown a copy of hte "yes-no" questionnaire of counsel for Respondent which stated: "If you signed a Union card did the person asking you to sign tell you that the only purpose of the card was to get an election." Withey admittedly "signed that . . . last week, last Saturday." She assertedly "read that before" signing, in the plant conference room. (See Resp. Exh. 8.) Further, Withey was asked to tell us everything that was said to her when requested to sign her card. Withey replied: "This was to help Union, in getting this card signed mean only to get the Union." Later, she added: "it was only for an election."

I credit the testimony of Shank as quoted above. I do not believe, on this record, that Shank engaged in the conduct attributed to her by Withey or used the words "only for an election" in an attempt to get Withey's signature. I am persuaded here that Withey, when she signed, understood that, by signing, she would be, in effect, helping the Union—"trying to get the Union" or "help with the Union." Withey claimed that she could "read" the card, but did not want to read it. I find here that Withey is the victim of Respondent's extensive antiunion campaign, acts of coercion, and discrimination. Further, the true source or origin of the words "only for an election" is not Shank or the union representatives, rather the true source or origin is the "yes-no" questionnaire of counsel for Respondent, which asks: "if you signed a Union card, did the person asking you to sign tell you that the only purpose of the card was to get an election." (Resp. Exh. 8.) Withey got this message and so testified here. In short, I find that Withey voluntarily signed a valid union authorization card and, following Respondent's unlawful antiunion conduct, is now attempting to disavow her union support. I would therefore count this card.

j. *The authentication of cards signed by Milam and Slater*

Unit employees Milam and Slater did not appear at the hearing. Authorization cards purportedly signed by them (G.C. Exhs. 21(e) and (d)) were offered into evidence by the General Counsel.[44] Tax withholding exemption certificates (W-4 forms) for the two employees had been produced by Respondent in response to a subpena. These W-4 forms, from Respondent's files, show what purports to be the signatures of Milam and Slater. (See G.C. Exhs. 31 and 32.) A comparison of the signatures of Milam and Slater on Respondent's W-4 forms with the union cards persuades me that the signatures on the W-4 forms are identical with the signatures on the cards. Thus, as for Una L. Milam, I note the similarities in the letter "U," "L," and "M." As for Jean L. Slater, I note the similarities in the letters "J," "L" and especially the "S." (Cf. G.C. Exhs. 31 and 32 and 21(d) and (e).)

In addition, both cards show that they were received by the Board's Regional Office by February 11, 1980.[45] I would therefore count these cards as valid authorizations which were duly authenticated. See, generally, *G. P. Putnam Sons, Inc., et al.*, 226 NLRB 1256, 1268 (1976).[46]

In sum, I find and conclude here that by February 12, 1980, 21 of the 37 unit employees had signed valid cards and by March 4, 1980, 22 of the 37 unit employees had signed cards.[47]

3. The propriety of a bargaining order

The Union initiated its organizational campaign during mid-November 1979. It filed its representation petition with the Board's Regional Director on February 11, 1980, and requested recognition from Respondent. As of February 12, 1980, when Respondent received the Union's request for recognition, the Union had obtained the support and membership cards from a clear majority of the unit employees. Respondent, by engaging in pervasive and extensive unfair labor practices, destroyed that majority and has made it impossible to conduct a fair rerun election. Thus, as detailed above, upper management made clear to the unit employees that it "was pissed" because "there were efforts to bring a Union into the plant" and "would do everything in [its] power to stop it." The employees' initial union meeting was spied upon. Respondent also created the impression that employee Union activities were under surveillance. Employees were repeatedly coercively interrogated about their union activities by Respondent. Employees were repeatedly threatened with plant closure, loss of benefits, strikes, violence, layoffs, and other reprisals if they chose union representation. Upper management, at the same time, attempted "to buy" employee votes by promising and granting employees wage increases and other benefits. Respondent discriminatorily denied employee Shank, the key union protagonist, reinstatement to her former job and, later, discriminatorily laid off Shank, all prior to the scheduled April 18 election, in an attempt to make clear to the unit employees what would happen to them if they voted for union representation. Respondent similarly discriminated against employee Roudebush, a known union supporter and, in like vein, discriminatorily denied recall opportunities for "temporaries," in an attempt to block employee union support.

The nature and extent of this accumulation of coercive and discriminatory conduct, and the lingering effect of such massive unlawful action, dictate the issuance of a bargaining order here as the only reasonable remedy.

CONCLUSIONS OF LAW

1. Charging Party Union is a labor organization as alleged.

2. Respondent Company is an employer engaged in commerce as alleged.

3. Respondent Company violated Section 8(a)(1) and (3) of the Act by engaging in surveillance of employee union activities; by creating the impression of engaging in such surveillance; by coercively interrogating employees about their union activities; by threatening employees with plant closure, loss of benefits, strikes, violence, layoffs, and other reprisals if they chose the Union as their bargaining agent; by promising and granting employees wage increases and other benefits in order to discourage their support of the Union; by discriminatorily refusing to reinstate employee Shank to her position when she returned from sick leave, by subsequently laying off Shank and by failing to recall Shank until after the representation election, because of Shank's union activities; by discriminatorily terminating future recall opportunities for temporary employees Marsh, Randolph, and Black, because of employee union activities; and by discriminatorily promoting and granting wage increases to employees Reinhard, Smith, and Wannett because they opposed the Union; and refusing to promote and grant a wage increase to employee Roudebush because she supported the Union.

4. Respondent Company violated Section 8(a)(5) and (1) of the Act by failing and refusing since on or about February 12, 1980, to recognize and bargain with Charging Party Union as the duly designated representative of a majority of its employees in an appropriate bargaining unit, as described below. An appropriate unit for collective bargaining purposes is, as follows:

[44] Counsel for the General Counsel asserted at the hearing that "subpena requests were sent to the last known address of Jean Slater, she had not appeared pursuant to the subpena request. Una Milam, her last known address was a local area address and we were informed that she moved somewhere in Texas, but we were unaware of where."

[45] Also see Union Representative Radulovich's credible testimony concerning the Union's receipt date on the cards.

[46] I note that Plant Manager Cassidy and antiunion employees McKeehan (Siteler) and Rainey testified that they heard employee Shank state at a meeting on March 6 that, in effect, the only purpose of the cards was for an election. Shank credibly denied making such a statement. McKeehan claimed that she "wrote it in [her] diary" and therefore is certain of the date. McKeehan's dairy only indicates "Irene bitching." Rainey claimed, at first, that Shank said "just for an election." Later, she acknowledged, "Well, I don't know sir, if she said just, but for an election, you could cross the just." I do not credit this testimony of Cassidy, Stiteler, and Rainey. I note that, by March 6, the representation hearing was over and cards were not being solicited.

[47] As noted, counsel for Respondent does not specifically controvert the remaining cards and, on this record, I find that they were validly executed prior to the demand dates.

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Lucerne Mines, Pennsylvania, facility, excluding all office clerical employees, technical employees, guards, professional employees, and supervisors as defined in the Act.

5. Respondent Company has not committed the other unfair labor practices as alleged in the complaints in this proceeding.

6. Respondent Company's unfair labor practice conduct, during the pertinent period, interfered with the holding of a fair and free election on April 18, 1980. Charging Party Union's objections are sustained. I therefore recommend that the election be set aside, the petition in Case 6-RC-8700 be dismissed, and all proceedings in connection therewith be set aside and vacated.

7. The unfair labor practices found above affect commerce as alleged.[48]

THE REMEDY

To remedy the unfair labor practices found above, Respondent Company is directed to cease and desist from engaging in the conduct found unlawful, and like and related conduct, and to post the attached notice. It has been found that Respondent discriminatorily refused, initially, to reinstate employee Shank to her "tapper" position. It will therefore be directed that Respondent offer employee Shank immediate and full reinstatement to the position which she was discriminatorily denied or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings sustained as a result of Respondent's unlawful conduct, by paying her a sum of money equal to that which she normally would have earned from the date of the discrimination to the date of Respondent's offer of reinstatement, less net earnings during such period, with backpay computed as provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and with interest computed as provided in *Florida Steel Corporation*, 231 NLRB 651 (1977).[49]

In addition, Respondent Company, having been found to have discriminated against employee Roudebush, will be directed to offer her the temporary supervisor position which she was discriminatorily denied, when such a position for which she is qualified becomes available, with backpay and interest for any loss of earnings sustained by her as a result of this discrimination, as provided above. Further, Respondent Company, having been found to have discriminated against temporaries Marsh, Randolph, and Black, will be directed to offer them temporary employment, when such positions for which they are qualified become available, and make them whole for any loss of earnings suffered as a result of the discrimination against them, as provided above.[50] Finally, as discussed above, a bargaining order will be recommended here to remedy the 8(a)(5) violation.

ORDER[51]

Respondent Advanced Mining Group, Div. of Republic Corp., Lucerne Facility, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in surveillance of employee union activities or creating the impression that it is engaging in such surveillance.

(b) Coercively interrogating employees about their union activities.

(c) Threatening employees with plant closure, loss of benefits, strikers, violence, layoffs, and other reprisals, if they chose the Union, United Steelworkers of America, AFL-CIO-CLC, or any other labor oragnization, as their bargaining agent.

(d) Promising and granting employees wage increases and other benefits in order to discourage their support of the Union.

(e) Discouraging membership in the above Union by discriminatorily refusing to reinstate employees to their former positions when they return from sick leave, by discriminatorily laying off employees, by discriminatorily refusing to recall employees, by discriminatorily terminating future recall opportunities for temporary employees, by discriminatorily promoting and granting wage increases to employees opposing union representation and by discriminatorily refusing to promote and grant such wage increases to employees supporting the Union, or by otherwise dsicriminating against its employees in regard to their hire and tenure of employment or in regard to any conditions of employment because of their Union activities.

(f) Refusing to bargain collectively with the Union, United Steelworkers of America, AFL-CIO-CLC, as the exclusive bargaining agent of the employees in the following unit:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Lucerne Mines, Pennsylvania, facility, excluding all office clerical employees, technical employees, guards, professional employees, and supervisors as defined in the Act.

(g) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act:

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[48] Errors in the transcript have been noted and corrected.

Counsel for Respondent also renews his motion for summary judgment. The motion is denied for the reasons and findings detailed above.

[49] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[50] Respondent will preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine compliance with and the amount of backpay due under the terms of this Decision.

[51] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Upon request, bargain collectively with said Union as the exclusive bargaining representative in the above unit and, if an understanding is reached, embody such understanding in as signed agreement.

(b) Offer employee Shank immediate and full reinstatement to the position of "tapper" which she was discriminatorily denied or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay substained as a result of its discriminatory treatment of her, in the manner set forth in this Decision.

(c) Offer employee Roudebush the position of temporary supervisor, when such a position for which she is qualified becomes available, and make her whole for any loss of pay sustained as a result of its discriminatory treatment of her, in the manner set forth in this Decision.

(d) Offer temporary employees Marsh, Randolph, and Black temporary employment, when such positions for which they are qualified become available, and make them whole for any loss of pay sustained as a result of the discrimination against them, in the manner set forth in this Decision.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facilities in Lucerne Mines, Pennsylvania, copies of the attached notice marked "Appendix."[52] Copies of said notice, on forms provided by the Regional Director for Region 6, shall, after being duly signed by Respondent, be posted by immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the election held on April 18, 1980, in Case 6-RC-8700, be set aside, the petition therein be dismissed, and the proceedings vacated.

IT IS FURTHER ORDERED that the complaints herein, insofar as they allege violations not specifically found in this Decision, be dismissed.

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[52] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."